

Mock Test Paper - Series I: March, 2024

Date of Paper: 7 March, 2024

Time of Paper: 2 P.M. to 5 P.M.

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (d)
2. (b)
3. (d)
4. (b)
5. (c)
6. (c)
7. (a)
8. (a)
9. (b)
10. (b)
11. (c)
12. (b)
13. (c)
14. (b)
15. (a)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

Answer 1

(a) (i) According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-

(A) paid-up share capital not exceeding four crore rupees; and

(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees:

Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Yellow Limited (a public company) holds 2,00,000 equity shares of Resolutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ` 10 each totaling ` 50 lakh). Hence, Resolutions Private Limited is not a subsidiary of Yellow Limited and hence it is a private company and not a deemed public company.

Further, the paid up share capital (` 50 lakh) and turnover (` 2 crore) is within the limit as prescribed under section 2(85), hence, Resolution Private Limited can be categorised as a small company.

(ii) According to section 2 (40), Financial statement in relation to a company, includes—

- (a) a balance sheet as at the end of the financial year;
- (b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (c) cash flow statement for the financial year;
- (d) a statement of changes in equity, if applicable; and
- (e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

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

(b) 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 consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2022 to 31.3.2023). Hence, Pacific Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2023-24.

- (c) Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.

In the given question, the dividend was declared on 31.07.2023 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd August, 2023). It is immaterial if Mr. A has received it on 5th September 2023 (i.e., after 30 days from 31.07.2023). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

- (d) (i) **Remittance of Foreign Exchange for studies abroad:** According to the provisions of the Foreign Exchange Management Act, 1999, foreign exchange may be released for studies abroad up to a limit of US \$ 250,000 for the studies abroad without any permission from the Reserve Bank of India (RBI). Above this limit, RBI's prior approval is required. Further, proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US \$ 140,000 is the drawal of foreign exchange, so permission of the RBI is not required by Mr. Pravesh.
- (ii) Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

This is a current account transaction, where Pravesh is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

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).

Answer 2

(a) According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- (1) five members personally present if the number of members as on the date of meeting is not more than one thousand,
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand,

shall be the quorum for a meeting of the company.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

(b) According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

(c) According to section 27 of the General Clauses Act, 1897, where any legislation or regulation

requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

Further, on the basis of decision taken by the apex court in case of Jagdish Singh vs Natthu Singh, where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In the given case, the Income Tax Department sent the show cause notice properly by a registered post at the address which was in the records of the department. Hence, it was a proper service of notice. Further, refusal by current owner of house to accept the notice, will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address. Therefore, Income Tax Department is correct in its decision.

Answer 3

- (a) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

- (b) According to Rule 2(1)(c) of the *Companies (Acceptance of Deposits) Rules, 2014*, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

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

Hence, in the instant case, the unsecured loan contributed by promoters of J Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

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

- (c) Impact of the words “Means” and “Includes” in the definitions-** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘**mean**’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘**include**’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

Definition of Director [section 2(34) of the Companies Act, 2013]: Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]: Whole time director includes a director in the whole time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole time director.

Answer 4

- (a) Directors’ Responsibility Statement:** According to section 134(5) of the Companies Act, 2013, the Directors’ Responsibility Statement referred to in 134(3)(c) shall state that—
- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

- (b) According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are non-resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.

- (c) (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.

Answer 5

- (a) Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

- (b) Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25-5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

- (c) **Financial Year:** According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

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

Answer 6

- (a) A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge.

Crystallization of a Floating Charge

In the following events, a floating charge will get crystallised or fixed:

- (i) When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.
- (ii) When the company ceases to continue its business.
- (iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (*i.e.* raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

OR

- (a) According to section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

No extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Example: ABC Limited was incorporated on 1.4.2021. No General Meeting of the company was held till 30.4.2023. The first financial year of ABC Ltd is for the period 1st April 2021 to 31st March 2022, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2022.

Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

(b) Preparation and filing of financial statements by a foreign company

According to section 381 of the Companies Act, 2013:

- (i) Every foreign company shall, in every calendar year,—
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
 - (b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

- (1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
 - (2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
- (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.
 - (iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

(c) According to the provisions of the Foreign Exchange Management Act, 1999 read with respective Rules and Schedule, foreign exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case, Ms. Prabha is required to seek permission of the said Ministry of the Government of India.

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Date of Paper: 4 April, 2024

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INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (c)
2. (b)
3. (c)
4. (b)
5. (a)
6. (d)
7. (c)
8. (c)
9. (b)
10. (b)
11. (b)
12. (b)
13. (c)
14. (b)
15. (c)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) (i) Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.
(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.
Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
According to section 2(87) of the Companies Act, 2013, "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:
(1) controls the composition of the Board of Directors; or

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

In the given question, total voting power in XYZ Private Limited is:

Particulars	Amount in ₹
Convertible Preference Shares (carrying voting rights)	1,00,00,000
Equity Shares	1,00,00,000
Total Voting Power	2,00,00,000

Cross Limited holds more than one-half of the total voting power [(₹ 10,00,000 equity shares+ ₹ 1,00,00,000 preference shares)/ ₹ 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited.

Further, in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

- (b) According to section 135(1) of the Companies Act, 2013, every company 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.

Also, according to sub-section 9, where the amount to be spent by a company under sub-section 5 does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

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 HelpIndia Limited for the FY 2023- 24 is ₹ 10 crore, hence, HelpIndia Limited is required to constitute a CSR committee during FY 2024- 25 as the Net profit before tax for the FY exceeds ₹ 5 crore.

2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (HelpIndia Limited was incorporated on 1st April 2022.)

Average Net Profit since incorporation: (₹ 11 crore + ₹ 10 crore)/ 2 = ₹ 10.5 crore

Minimum contribution towards CSR will be: 2% of ₹ 10.5 crore = ₹ 0.21 crore or ₹ 21 lakh.

In the given question, since the amount to be spent by HelpIndia Limited is not exceeding ₹ 50 lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

- (c) Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.

Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

2. (a) (i) Abridged Form of Annual Return

In terms of Second Proviso to Section 91(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1) One Person Company and small company shall file the annual return in Form No. MGT-7A.

- (ii) **Signing of Annual Return**

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return

shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(b) According to section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

For the issue of bonus shares APR Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

(c) (i) Movable Property

According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

(ii) Oath

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

3. **(a)** As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company:

- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits (if any) or other income in promoting its objects; and
- intends to prohibit payment of any dividend to its members.

- (b)** According to Rule 2(1)(c)(x) of the Companies (Acceptance of Deposits) Rules, 2014, 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 above case, the amount of ₹ 4,00,000 received by Wood Limited from Mr. Cotton under the contract of employment with the company being non-interest bearing security deposit, will be considered as deposit in terms of sub-clause (x), since the amount is more than his annual salary of ₹ 3,85,000.

- (c)** Read the Statute as a Whole:

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions– if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

4. (a) Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed:

- (a) to prepare the financial results of the company on periodical basis and in prescribed form
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Crystal Limited is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

- (b)** According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.

(c) Heading and Title of a Chapter

If we glance through any Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles. These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.

The headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section ranged under any particular heading.

They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.

It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble. But a heading cannot control or override a section.

5. (a) Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]

A LLP may be wound up by the Tribunal:

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

(b) According to the Companies (Accounts) Rules, 2014, every unlisted public company having:

- (A) paid up share capital of ₹ 50 crore rupees or more during the preceding financial year; or
- (B) turnover of ₹ 200 crore rupees or more during the preceding financial year; or
- (C) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore rupees or more at any point of time during the preceding financial year; or
- (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ₹ 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.

(c) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

In the given instance, Sheesham Limited declared dividend for its shareholder in its Annual General Meeting held on 8th August 2023. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 9th August 2023 to 7th September 2023. In this series of 30 days, 8th August 2023 will be excluded and last 30th day, i.e. 7th September 2023 will be included. Accordingly, Sheesham Limited

will be required to pay dividend within the time frame of 9th August 2023 and 7th September 2023 (both days inclusive).

6. (a) Inspection of Register of Charges and Instrument of Charges

As regards inspection, section 85 (2) of the Companies Act, 2013, states that the register of charges and the instrument of charges shall be open for inspection during business hours:

- (1) by any member or creditor without any payment of fees; or
- (2) by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.

OR

(a) (i) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–

- ◆ is or could reasonably be regarded as defamatory of any person; or
- ◆ is irrelevant or immaterial to the proceedings; or
- ◆ is detrimental to the interests of the company.

(ii) Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

(b) According to section 389 of the Companies Act, 2013:

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

- ✓ a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and
- ✓ the prospectus states on the face of it that a copy has been so delivered, and
- ✓ there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

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

- (1) any consent to the issue of the prospectus required from any person as an expert;
 - (2) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
 - (3) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
 - (4) a copy of underwriting agreement; and
 - (5) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.
- (c)** Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is 'cultural tours'.

Accordingly, Ms. Kanika Tripathi can withdraw foreign exchange of USD 75,000 for meeting expenses of cultural tour after obtaining permission from Ministry of Human Resource Development (Department of Education and Culture) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Mock Test Paper - Series I: July, 2024

Date of Paper: 30th July, 2024

Time of Paper: 2 P.M. to 5 P.M.

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (c)
2. (b)
3. (b)
4. (b)
5. (d)
6. (d)
7. (a)
8. (a)
9. (c)
10. (b)
11. (b)
12. (b)
13. (b)
14. (d)
15. (c)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) 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 200.
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 ABC Limited are:

(i)	Directors and their relatives	20
(ii)	Joint shareholders (10x2)	10
(iii)	Other Members	150
	Total	180

- (i) ABC 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 180 which is within the prescribed maximum limit of 200, so ABC 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 180 which does not exceed maximum limit of 200.
- (b) 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 or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or 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]

According to the given facts, Sunday Ltd. incurred losses in current financial year 2023-24. It is also provided that, 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.

Board of Directors of Sunday Ltd. recommended a final dividend @15% for financial year 2023-24 in the meeting held on 5th August 2024. 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.

- (c) According to section 5 of the Foreign Exchange Management Act, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

- (i) Mr. Vinod wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in Singapore. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. Vinod cannot withdraw foreign exchange for this purpose.

- (ii) In the given situation, it is a current account transaction, where Mr. Shyam is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

2. (a) Crystallization of a Floating Charge

When the creditor enforces the security due to the breach of terms and conditions of floating charge or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date. This is called crystallization of a floating charge.

A floating charge remains dormant until it becomes fixed or crystallizes. On crystallization of charge, the security (*i.e.* raw material, stock-in-trade, etc.) becomes fixed and is available for realization by the lender so that borrowed money is repaid. Crystallization of floating charge may occur when the terms and conditions of floating charge are violated or the company ceases to continue its business or the company goes into liquidation or the creditors enforce the security covered by the floating charge.

- (b) According to section 2(13) of the Companies Act, 2013, 'Books of account' includes records maintained in respect of:

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and

- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

(c) (i) Measurement of Distances

According to section 11 of the General Clauses Act, 1897, in the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

(ii) Duty to be taken pro rata in enactments

According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

3. (a) Exceptions to Doctrine of Indoor Management

Relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances:

1. **Knowledge of irregularity** - In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
2. **Negligence:** If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
3. **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
4. Where the **question** is in regard to the very **existence of an agency**.
5. Where a **pre-condition** is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

- (b)** Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some

other place within the city, town or village in which the registered office of the company is situated.

However, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, ‘National Holiday’ means and includes a day declared as National Holiday by the Central Government.

In the instant case, Prateek Limited, an unlisted company, can hold its AGM on 13th August 2024 which happens to be a holiday declared by the Government of Arunachal Pradesh and so, this is not a national holiday.

(c) 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 fortissima 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.

4. (a) (i) As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further the proviso provides that, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Chitralkha (spouse of Chintamani, the auditor), is having securities of Nagmani Limited having face value of ₹ 80,000, which is within the prescribed limits under the proviso to section 141(3)(d)(i). Therefore, Chintamani will be eligible to be appointed as an auditor of Nagmani Limited.

- (ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Mani, real sister of Mr. Priyanshu (Chartered Accountant) is the CFO (a KMP) of Parivar Ltd., hence, Mr. Priyanshu will be disqualified to be appointed as an auditor in the said company.

(b) Small limited liability partnership

According to section 2(1)(ta) of the Limited Liability Partnership Act, 2008, small limited liability partnership means a limited liability partnership:

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
 - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
 - (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.
- (c) Preamble merely affords help in the matter of construction, if there is an ambiguity in the law.

Courts refer to the preamble as an aid to construction in the following situations:

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

5. (a) According to section 24(3) of the Limited Liability Partnership Act, 2008, where a person has ceased to be a partner of a LLP (hereinafter referred to as 'former partner'), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless:
- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
 - (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to Registrar of Companies, Shilpa will still be liable for the loss of firm of the transactions entered after 7th May 2024.

(b) Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,:

- (a) to prepare the financial results of the company on periodical basis and in prescribed form
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Vishal Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that the prescribed class(es) of unlisted companies has to prepare Periodical Financial Results.

(c) Official Chiefs and subordinates

According to section 19 of the General Clauses Act, 1897, a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

In the instant case, Ms. Priya, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director. Hence, the actions taken by Ms. Priya Sharma were valid.

6. (a) Persons entitled to receive the Notice of the General Meeting

According to section 101(3) of the Companies Act, 2013, the notice of every meeting of the company shall be given to:

- (1) every member of the company, legal representative of any deceased member or the assignee of insolvent member;
- (2) the auditor or auditors of the company;
- (3) every director of the company.

OR

(a) Time limit for Filing of Annual Return

- (i) A copy of annual return shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the Annual General Meeting ('AGM') is held.
- (ii) Where no annual general meeting is held in any year, it shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

(b) Audit of accounts of foreign company

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

- (i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
- (ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company.

(c) Currency

According to section 2(h) of the Foreign Exchange Management Act, 1999, 'Currency' includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

(d) Official Gazette

According to section 3(39) of the General Clauses Act, 1897, 'Official Gazette' or 'Gazette' shall mean:

- (i) The Gazette of India, or
- (ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

Mock Test Paper - Series I: August, 2024

Date of Paper: 17th August, 2024

Time of Paper: 2 P.M. to 5 P.M.

INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (b)
2. (b)
3. (a)
4. (a)
5. (a)
6. (c)
7. (d)
8. (b)
9. (b)
10. (b)
11. (b)
12. (d)
13. (c)
14. (c)
15. (b)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

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

- (b)** According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Surya Ltd. were adopted at the adjourned AGM held on 29th September, 2024 and filing of financial statements with Registrar was done on 20th October, 2024 i.e. within 30 days of the date of adjourned AGM.

Hence, Surya Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

- (c)** 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. A 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. A 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.

2. (a) Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.

Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly 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
- ◆ 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.

According to section 82 (4), section 82 shall not be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company *i.e.* even if no intimation is received by him from the company.

Information to affected parties: According to section 83 (2), 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) of the Companies (Registration of Charges) Rules, 2014, in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

- (b) Save as provided in the Companies Act, 2013 or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by:

1. Post, or
2. registered post, or
3. speed post, or
4. courier, or
5. by delivering at his office or address, or

6. by such electronic or other mode as may be prescribed.

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

(c) Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (1) **Publish of proposed draft rules/ bye- laws:** The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) **To publish in the prescribed manner:** The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) **Notice annexed with the published draft:** There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) **Consideration on suggestions/objections received from other authorities:** The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) **Notified in the official gazette:** The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

3. (a) Application of Premium received on Issue of Shares

The provisions of the Companies Act, 2013, allow the companies to apply securities premium account for:

- 1) Issue of fully paid bonus shares;
- 2) Writing off the preliminary expenses;
- 3) Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);
- 4) Premium payable on the redemption (of any preference shares or of any debentures); or

- 5) Buy-back (purchase of its own shares or other securities under section 68).
- (b)** According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.
- (i) (1) P1, P2 and P3 will be counted as three members.
- (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

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

- (c) (i)** Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not

interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

- (ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

- 4. (a) 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 Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

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

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

- (b) **Body Corporate:** According to section 2(1)(d) of the Limited Liability Partnership Act, 2008, body corporate means a company as defined in section 2(20) of the Companies Act, 2013 and includes:

- (i) a LLP registered under the Limited Liability Partnership Act, 2008;
- (ii) a LLP incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include—

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a limited liability partnership as defined in the Limited Liability Partnership Act, 2008), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(c) Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

5. (a) Section 15 of Limited Liability Partnership Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

- (a) that of any other LLP or a company; or
- (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Sulbha LLP need not change its name even it resembles with the name of partnership firm.

(b) Section 139(2) of the Companies Act, 2013, provides that no listed company or a company belonging to prescribed classes of companies, shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

The proviso to section 139(2) provides that an audit firm which has completed its terms, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

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

In the given question, SM & Company has also completed its two terms of 5 years (i.e. 10 years in total). Thus, ML & Co. cannot be appointed as statutory auditor of Liberal Ltd. during cooling period because CA. Mudit was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2032. After 5 years, Liberal Ltd. is free to appoint ML & Co. as its statutory auditors.

- (c) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

In the given instance, A Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27th September 2024. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28th September 2024 to 27th October 2024. In this series of 30 days, 27th September 2024 will be excluded and last 30th day, i.e. 27th October 2024 will be included. Accordingly, A Ltd. will be required to pay dividend within 28th September 2024 and 27th October 2024 (both days inclusive).

6. (a) According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

OR

- (a) Under section 102(2)(b) of the Companies Act, 2013, in the case of any general meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

- (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

- (b) As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

- (c) According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:
- (i) deposits, credits and balances payable in any foreign currency,
 - (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
 - (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.