

Attempt All MCQs (1 marks each X 10 MCQs = 10 Marks)

Case Study Based MCQ

Jai and Veeru, two friends, formed a private limited company as Basanti Taanga Private Limited and got it registered on 10th January, 2018. The registered office of the company was situated at Kolkata, West Bengal. The company had an authorised share capital of ₹ 50 lacs divided into 5 lacs equity shares of ₹ 10/- each. The issued, subscribed and paid-up share capital of the company was of ₹ 30 lacs divided into 3 lacs equity shares of ₹ 10 each. The company was engaged in supplying various motor parts to the vehicles companies. 'Basanti' was a registered Trade mark of Basanti Motorwala Private Limited of Mumbai since 15th January, 2016 under the Trade Marks Act, 1999. This company was also engaged in manufacturing and supplying various auto parts to the vehicles companies.

Basanti Motorwala Private Ltd. of Mumbai came to know on 20th January, 2022 about Basanti Taanga Private Limited of Kolkata who was using identical name and mark. Being a registered proprietor of a trade mark, Basanti Motorwala Private Ltd. filed an objection with an appropriate authority under Companies Act, 2013 on 15th March, 2022 that the name Basanti Taanga Private Limited or the mark the company was using is found to be identical with or too nearly resembles to the registered trade mark of Basanti Motorwala Private Ltd. and as such the appropriate authority should direct Basanti Taanga Private Limited to change its name. The appropriate authority after going through all the details rejected the application of Basanti Motorwala Private Ltd.

Thereafter on 14th July, 2020, Basanti Motorwala Private Ltd. requested Basanti Taanga Private Limited to change its name and Basanti Taanga Private Limited accepted the same in good relationship. Basanti Taanga Private Limited complied with all the formalities under Companies Act, 2013 such as passing of all necessary resolutions, taking approval from appropriate authority, filing of documents with the Registrar of Companies etc. The name of the company Basanti Taanga Private Limited was changed to Jai Veeru Private Limited. A fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Subsequent to the issuance of the new incorporation certificate, steps were taken up to incorporate the new name in all copies of the Memorandum of Association, Articles of Association and other documents of the company.

Q1: In the above case scenario, what can be the most evident reason for the appropriate authority to reject the application of Basanti Motorwala Private Ltd?

- (a) The appropriate authority rejected the application on the basis that the names of both the companies are different-Basanti Motorwala Private Ltd and Basanti Taanga Private Limited.
- (b) The appropriate authority rejected the application as Basanti Motorwala Private Ltd (owner of the registered mark) should had filed the objection within three years of the registration of company with identical name.
- (c) The appropriate authority could have rejected the application on the basis that both the companies are located in different cities and thus can use almost similar names.
- (d) The appropriate authority could have rejected the application on the basis that both the companies have different years of incorporation and both are located in different cities.

Q2: In the above case scenario, what ought to have been the time limit within which Basanti Motorwala Private Ltd, should have filed the objection for wrong name:

- (a) On or before 9th January, 2021
- (b) On or before 9th January, 2022
- (c) On or before 9th January, 2023
- (d) They can file the objection at any time

Q3: According to above case, a fresh certificate of incorporation was issued to the company by the Registrar after being satisfied with the name change application of the company. Which of the following statements is correct in this context?

- (a) The change in name of the company is said to be complete and effective from the date of passing of resolution in the general meeting of members.
- (b) The change in name of the company is said to be complete and effective from the date of issue of fresh certificate of incorporation by the Registrar.
- (c) The change in name of the company is said to be complete and effective from the date on which documents were filed with the Registrar.
- (d) The change in name of the company is said to be complete and effective from the date of the order of Ministry of Corporate Affairs approving the change of name.

Q4: A Public company may be formed by:

- (a) Only two persons
- (b) Not more than three persons
- (c) Not more than Seven Persons
- (d) Seven or more Persons

Q5: Namita Ceramics Goods Limited having 152 members was incorporated with the main objects to manufacture ceramic goods, unglazed floor and wall tiles, etc. and to carry on trading in such products. After 3 years of successful operation, it wants to diversify its business by entering into the field of manufacturing electronic goods for which it required to alter its objects clause. Advise the company in relation to alteration of Memorandum.

- (a) The company can alter its Memorandum of Association by passing an ordinary resolution and getting it confirmed by the Regional Director
- (b) The company can alter its Memorandum of Association by passing a special resolution in the shareholders' meeting
- (c) The company can alter its Memorandum of Association by passing a special resolution in the shareholders' meeting and getting it confirmed by the Regional Director
- (d) The company can alter its Memorandum of Association by passing a special resolution in the shareholders' meeting and simultaneously publishing the contents of special resolution in 2 newspapers (one in English and other in vernacular language) circulating in that area

Q6: In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles,

- (a) By passing a special resolution
- (b) With the consent of all the members
- (c) By passing a special resolution and approval of the Central Government
- (d) With the consent of all the members and approval of the Central Government

Q7: Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

- (a) Latest by 20th July, 2018
- (b) Latest by 27th July, 2018
- (c) Latest by 6th August, 2018
- (d) Latest by 4th September, 2018

Q8: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of _____ from the date of filing of the special resolution.

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 6 months

Q9: If a company is registered by incorrect information, then its winding up may be ordered by

- (a) Central Government
- (b) Registrar of Companies
- (c) NCLT
- (d) Court

Q10: Sukant and Sukriti, architects by profession and residents of Janakpuri, Delhi, have formed a company by the name Suk Architects and Consultants Private Limited, whose registered office is situated in a somewhat less inhibited market area of Gurugram, Haryana. They do not consider it to be a safe place. Therefore, to be on safer side they have kept all the documents and information relating to incorporation of their

company (that were originally filed with Registrar for registration of Company) at Sukant's residence. Is their action justified?

- (a) It is their prerogative to keep all the documents and information relating to incorporation of their company at a place which they think is quite safe – even if it is Janakpuri, Delhi.
- (b) Considering registered office to be unsafe, they can keep all the documents and information relating to incorporation of their company at any place in Haryana only where Gurugram is situated but for this purpose they must seek permission of the ROC.
- (c) If they do not want to seek permission of ROC, considering registered office to be unsafe, they can keep all the documents and information relating to incorporation of their company at any place which should be within three kms. of their registered office but in Gurugram only.
- (d) They have to keep all the documents and information relating to incorporation of their company at the registered office, only.

Question 1 is compulsory

Attempt any 6 out of remaining 7

1. Kapila Limited issued equity shares of ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 01.04.2021 which have been fully subscribed, whereby Kusha Limited holds 4000 shares and Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holding 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. Examine with relevant provisions of the Companies Act, 2013:
 - a. Whether Kapila Limited is a subsidiary of Red Limited?
 - b. Whether Kapila Limited can hold shares of Red Limited?
2. Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised ₹ 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not, then what advise will you give to company. If yes, then give steps to be followed.
3. Mr. Anil Desai, has applied for reservation of company name with a prefix "Sanwariya". He claimed that the Prefix "Sanwariya" is registered trademark in his name. Later on, it is found that the said prefix is not registered with Mr. Anil Desai, however, he has formed company by giving incorrect documents/information while applying the name of the company. What action can be taken against the company?
4. Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.
5. Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.
6. Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th January till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

7. Mr. Rajan incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to borrow some funds immediately to meet the working capital requirement of the company. Please advise as to whether Mr. Rajan can borrow funds immediately after incorporation.
8. An application has been made by a shareholder of a company to the National Company Law Tribunal (NCLT) that the company which has been just incorporated has supplied incorrect information in the documents filed for incorporation. Examine what action can be taken by the NCLT if the contention of the shareholder is proved to be true?

or

A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013.

(5 marks each)



CA Intermediate (Batch Aug 2024)

Solution of Test of

Chapter 2 - Incorporation of the Company

Maximum Time = 1.5 hours

Part A - MCQ

Q1.	b
Q2.	a
Q3.	b
Q4.	d
Q5.	b
Q6.	b
Q7.	b
Q8.	a
Q9.	c
Q10.	d

Part B - Subjective

1. This given problem is based on **section 2(87)** read with **section 19** of the Companies Act, 2013.

As per **section 2(87)** of the Companies Act, 2013 "subsidiary company", in relation to any other company (i.e., the holding company), means a company in which the holding company -

- i. controls the composition of the Board of Directors; or
- ii. 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.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

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

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

Here in the instant case, Kapila Ltd. issued 10,000 equity shares on 1.4.2021 whereby Kusha Ltd. & Prem Ltd. holds 4,000 & 2,000 shares respectively in Kapila Ltd., Considering 1 share = 1 vote, Kusha Ltd. and Prem Ltd. together holds more than one-half (50%) of the total voting power.

Further, Red Ltd. controls the composition of Board of Directors of Kusha Ltd. and Prem Ltd. from 01.08.2021. In the light of section 2(87), Red Ltd. is a holding company of Kusha Ltd. and Prem Ltd.

Therefore, **Kapila Ltd. will be a subsidiary of Red Ltd.**

Whereas Kapila Ltd. is already holding 20% equity shares of Red Ltd. before the date of issue of equity shares i.e. 1.4.2021.

Following are the answers to the questions -

- (i) **Yes.** In this case Kapila Ltd. shall be deemed to be a subsidiary company of the holding company (Red Ltd.) as Red Ltd. controls the composition of subsidiary companies Kusha Ltd. & Prem Ltd. as per explanation to section 2(87).
 - (ii) **Yes.** In this case Kapila Limited **can hold** the shares in Red Limited because Kapila Ltd. was holding 20% of equity shares of Red Ltd. even before it became a subsidiary company of the Red Ltd. (i.e. on 01.08.2021), according to the exception to section 19. But Kapila Ltd. **cannot exercise any voting rights** on its shares.
2. According to **section 13** of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a **special resolution** is passed by the company and –
- (i) the details in respect of such resolution **shall also be published in the newspapers** (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
 - (ii) the **dissenting shareholders shall be given an opportunity to exit** by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify registration within a period of 30 days. Alteration will be effective only after this certificate by ROC.

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

3. As per the provisions of **section 4(5)** of the Companies Act, 2013; where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then –
- (a) IF the company has NOT been INCORPORATED,
- the reserved name shall be cancelled and
 - the person making application shall be liable to a penalty up to INR 1 lakh;
- (b) IF the company has been INCORPORATED, the Registrar may, after giving the company an opportunity of being heard –
- either direct the company to change its name within a period of 3 months, after passing an ordinary resolution;
 - take action for striking off the name of the company from the register of companies; or
 - make a petition for winding up of the company

Now, as per the facts of the current case, Mr. Anil Desai, has applied for reservation of company name with a prefix “Sanwariya”. He claimed that the Prefix “Sanwariya” is registered trademark in his name. Later on, it is found that the said prefix is not registered with Mr. Anil Desai, however, he has formed company by giving incorrect documents/information while applying the name of the company.

Thus, as per the provisions mentioned above, Registrar will direct the company to either change its name or can initiate an action for striking-off or may also make a petition for winding up the company.

4. As per **Section 9 and 10** of the Companies Act, 2013 following shall be the effect of registration of a company:
- a. From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.
- b. Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.
- c. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- d. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.
5. As per **section 5** of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.
- The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by
- all the members of the company in the case of a private company and
 - by a special resolution in the case of a public company.

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

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles. Hence the contention of the director that they cannot make a provision against the Companies Act, 2013 is incorrect.

6. According to **section 3A** of the Companies Act, 2013, If at any time the number of members of a company is reduced,
- in the case of a public company, below 7,
 - in the case of a private company, below 2, and

the company carries on business for more than **6 months** while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is carrying on business with less than 7 members or 2 members, as the case may be, shall be **severally liable** for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Hence, in the given situation, the number of members in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the **reduced members of the company shall be severally liable** for the payment of the whole debts of the company contracted after the expiry of those 6 months, and may be severally sued therefor, provided they were cognizant of this fact.

7. As per **Section 10A** of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Act, 2019 (i.e. after 2 November 2018) and having a share capital shall not commence any business or exercise any borrowing powers unless -
- i. A **declaration** is filed by a director within a period of **180 days** of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar **that every subscriber to the memorandum has paid the value of the shares** agreed to be taken by him on the date of making of such declaration; and
 - ii. The company has filed with the Registrar a **verification of its registered office** as provided in section 12(2).

In case of default in complying with requirements of section 10A,

- the company shall be liable to a penalty of INR 50,000 and
- officer in default shall be liable to a penalty of INR 1,000/ day during which the default continues but not exceeding INR 1 lakh

Also, in case of non-compliance, Registrar may also initiate an action for removal of name of the company from the register of companies.

Thus, Mr. Rajan has to comply with the above requirements and procedure before borrowing any funds to meet the working capital requirement of the company.

8. According to **section 7(7)** of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants -
- a. pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - b. direct that liability of the members shall be unlimited; or
 - c. direct removal of the name of the company from the register of companies; or
 - d. pass an order for the winding up of the company; or
 - e. pass such other orders as it may deem fit.

However before making any order –

- i. the company shall be given a reasonable opportunity of being heard in the matter; and
- ii. the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

or

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

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

- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

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

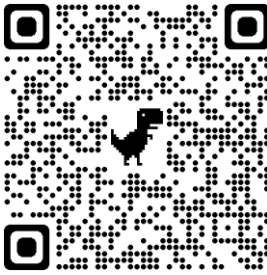

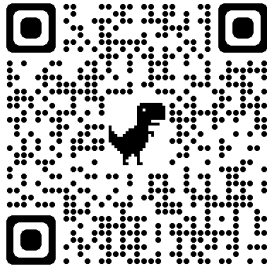

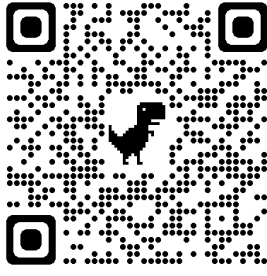
According to **section 8(9)**, if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to **Insolvency and Bankruptcy Fund** formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

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

In the event of winding up or dissolution of the company as provided in sub-section (9) of section 8 of the Companies Act, 2013. Therefore, the **proposal in its entirety is not feasible**. The promoters will be accordingly advised that the proposal should be in conformity with the provisions of the Act.



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