

MODEL TEST PAPER 1
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory.

Case Scenario 1

Silver Private Limited was incorporated in 2016 having its registered office at Gurugram, Haryana. It is registered with an authorised share capital of ₹ 10 crore divided into 1 crore equity shares of ₹ 10/- each. The paid-up share capital of the company is ₹ 50 lakh divided into 5 lakh equity shares of ₹ 10/- each. The company is in manufacturing of rubber parts to be used in manufacturing of parts of passenger vehicles.

Mr. Raj and Mr. Pawan are directors of the company. Mr. Siddharth (son of Mr. Raj) on January 8, 2022 had advanced a loan of ₹ 50 lakh at an interest rate of 8% p.a. and the loan is expected to be repaid after a period of thirty six months.

Silver Private Limited intends to accept deposits of ₹ 60 lakh from its members for the purpose of expansion of its business. The financial particulars of the company are as below mentioned: -

S. No.	Particulars	Amount (₹)
1	Paid-up share capital	50 lakh
2	Free Reserves	20 lakh
3	Security premium	10 lakh
4	Borrowings from banks	65 lakh
5	Turnover	200 lakh

As on the date of acceptance of deposits, the company has not defaulted in repayment of borrowings along with interest thereon.

The Company Secretary of the company informed Board of Directors of the company that they need to appoint an internal auditor for audit of the company. The Board stated that statutory auditor is already performing audit function and there is no need to appoint internal auditor as it causes additional burden on the company.

The company require funds for the purpose of meeting working capital requirements. The company has approached the bank for meeting working capital requirements and has availed a loan of ₹ 65 lakh from bank. The loan is secured by the personal guarantee of the directors of the company.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5) given herein under: -

1. With respect to loan advances by Mr. Siddharth to Silver Private Limited, whether the same can be classified as deposit or not?
 - (a) It will be treated as deposit as the loan is advanced by Mr. Siddharth who is neither director nor shareholder of the company.
 - (b) It will be treated as deposit as the loan is given by relative of the director.
 - (c) It will not be treated as deposit as Mr. Siddharth has given loan to the company at an interest rate of 8% p.a.
 - (d) It will not be treated as deposit if Mr. Siddharth gives a written declaration to the effect that loan is advanced by him from his own source of funds, not from borrowings or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's Report.
2. With respect to acceptance of deposits from members, which of the below mentioned statement is correct:
 - (a) Silver Private Limited cannot accept deposits of more than paid-up share capital which is ₹ 50 lakh.
 - (b) Silver Private Limited can accept deposits of ₹ 60 lakh from members, as it is less than twice of its paid up share capital or ₹ 50 crore, whichever is less.
 - (c) Silver Private Limited cannot accept deposits of more than higher of aggregate of paid-up share capital and free reserves which is ₹ 70 lakh and borrowings which is ₹ 65 lakh.
 - (d) Silver Private Limited cannot accept deposits of more than aggregate of paid-up share capital and free reserves, which is ₹ 70 lakh.
3. Is Silver Private Limited required to appoint internal auditor in accordance with the provisions of the Companies Act, 2013?
 - (a) Silver Private Limited is not required to appoint internal auditor as private companies are not required to appoint internal auditor.
 - (b) Silver Private Limited is required to appoint internal auditor as borrowings is below prescribed limited.
 - (c) Silver Private Limited is required to appoint internal auditor as aggregate of paid-up share, free reserves and security premium is more than prescribed limited.
 - (d) Silver Private Limited is not required to appoint internal auditor as turnover is less than prescribed limited.
4. Which of the following statement is correct in respect of loan of ₹ 65 lakh availed by the company?
 - (a) Silver Private Limited needs to create and register charge within 30 days from the date of sanction of loan.

- (b) Silver Private Limited is not required to create and register charge as the loan is against the personal guarantee of directors.
- (c) Silver Private Limited needs to create and register charge within 15 days from the date of sanction of loan.
- (d) Silver Private Limited needs to create and register charge within 60 days from the date of sanction of loan.
5. The management of Silver Private Limited for ease of doing business and reduce compliance burden, proposed, it to be registered as a small company. Within the provided information and the legal requirements under the Companies Act, 2013, recommend on the validity of the said proposal:
- (a) Proposal is valid, as any private limited company can apply for the status of small company.
- (b) Proposal is invalid, as the Silver Private Limited is not fulfilling the requirement of turnover of ₹ 400 crore.
- (c) Proposal is valid, as the Silver Private Limited is fulfilling the requirement of paid up share capital and turnover which is within the prescribed limits.
- (d) Proposal is invalid, as Silver Private Limited is fulfilling the requirement of paid up share capital.
6. The financial particulars of ABC Limited in respect of immediately preceding financial year are as under:

S. No.	Particulars	Amount in ₹ crore
1	Net worth	280
2	Turnover	550
3	Net Profit	5.50
4	Borrowings	60

- Choose the correct option in terms that whether the provisions of Corporate Social Responsibility are applicable to ABC Limited.
- (a) No, as ABC Limited is having net worth of more than ₹ 250 crore in the immediately preceding financial year.
- (b) Yes, as ABC Limited is having turnover of more than ₹ 500 crore but less than ₹ 800 crore in the immediately preceding financial year.
- (c) Yes, as ABC Limited is having net profit of more than ₹ 5 crore in the immediately preceding financial year.
- (d) Yes, as ABC Limited is having loans and borrowings of more than ₹ 50 crore in the immediately preceding financial year.
7. Under what circumstances is the requirement for constituting a Corporate Social Responsibility (CSR) Committee waived, and who is responsible for discharging the functions of the CSR Committee in such cases?
- (a) When the amount to be spent by a company does not exceed fifty lakh rupees; the Board of Directors assumes the responsibility of the CSR Committee's functions.

- (b) When the amount to be spent by a company exceeds fifty lakh rupees; the Board of Directors assumes the responsibility of the CSR Committee's functions.
- (c) When the amount to be spent by a company does not exceed fifty lakh rupees; the shareholders assume the responsibility of the CSR Committee's functions.
- (d) When the amount to be spent by a company exceeds fifty lakh rupees; the shareholders assume the responsibility of the CSR Committee's functions.

Case Scenario 2

Vidhya Masterminds LLP was incorporated on 15th April, 2023. Sagar, Manthan, Vishnu and Vasuki were partners in the firm. Sagar and Manthan were also the designated partners in this firm. The firm was incorporated with the object of manufacturing and trading of cycles. The business was going too smoothly.

But on 30th April, 2023, some Mr. Vidhyaram Tolaramani filed an application to registrar that he has a registered trademark in the name of "Vidhya Masters" which he has got registered before 15.04.2023. Therefore, the LLP "Vidhya Masterminds LLP" should change its name. On the basis of basic investigation, registrar found that Mr. Vidhyaram Tolaramani was correct in contention. The registrar sent a direction to Vidhya Masterminds LLP to change its name as it too nearly resembles with the trademark of Mr. Vidhyaram Tolaramani i.e. "Vidhya Masters". The notice was issued by the registrar on 5th May, 2023 by post but due to some internal problem of postal department, notice reached the LLP on 10th May, 2023. Vidhya Masterminds LLP ignored the notice and continued working under the same name. On 16th August, 2023 the registrar *suo-moto* allotted the LLP a new name "Sahitya Masterminds LLP" and entered this new name in the register of LLP and also issued a fresh certificate of incorporation to Vidhya Masterminds LLP with new name. Vidhya Masterminds LLP, now "Sahitya Masterminds LLP" was not comfortable with new name. It started the process to change the name allotted by the registrar.

Meanwhile, Vishnu was appointed as designated partner in Vidhya Masterminds LLP on 25th July, 2023 but this information was not sent to the registrar. On 20th June, 2023, Mr. Vasuki had given a written notice to the LLP that he could not continue as a partner in LLP with effect from 22nd July, 2023. This cessation from the LLP was also not informed by either LLP or Mr. Vasuki, to the Registrar.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following MCQs (8- 10) given herein under: -

8. When the registrar directed Vidhya Masterminds LLP to change its name, by which date the LLP should have changed the name of LLP?
 - (a) By 5th August, 2023 i.e. within a period of 3 months from the date of issue of such direction by registrar.
 - (b) By 10th August, 2023 i.e. within a period of 3 months from the date of receiving of such direction by the firm.
 - (c) By any time according to the convenience of Vidhya Masterminds LLP.

- (d) Vidhya Masterminds LLP is not liable to change its name.
9. Vishnu was appointed as designated partner in the Vidhya Masterminds LLP on 25th July, 2023. By what time limit the LLP should have informed the registrar?
- (a) 9th August, 2023 i.e. within 15 days of appointment
 - (b) 24th August, 2023 i.e. within 30 days of appointment
 - (c) 25th August, 2023 i.e. within 1 month of appointment
 - (d) 25th October i.e. within 3 month of appointment.
10. Whether Mr. Vasuki will be liable for penalty for not intimating the registrar about the appointment of Mr. Vishnu as designated partner?
- (a) No, as he was not partner in LLP on the date of appointment of designated partner.
 - (b) Yes, as former partner is to be regarded still being a partner of the LLP unless a notice has been delivered to the Registrar by former partner or LLP.
 - (c) Yes, even if a notice has been delivered to the Registrar by LLP about his retirement.
 - (d) No, in any case Mr. Vasuki will not be liable.

Case Scenario 3

Tech Inspiration Private Limited was incorporated on 30.06.2018. The main object of the company was to provide guidance classes for engineering aspirants. For this purpose, they opened a coaching center at Freedom Plaza, Near Bhagwan Talkies, Bye Pass Road, Agra. The premise was owned by the company. The company also made a "Employee Appointment Committee" for the systematic selection and appointment of employees including faculties for teaching. In the first slab, committee appointed nine teachers, 3 clerical staff and one peon. For the purpose of expansion of business, company decided to open a branch of the company at nearby city of Agra. After the due research, the company decided to open its branch at city "Bharatpur" which was just 50 kilometers far from Agra. The company approached Mr. Raghuram Meena owner of land at Bharatpur suitable for company. Mr. Raghuram Meena leased his land for ten years to Tech Inspiration Private Limited. The land had a small temple of lord Ganpati at its centre. The company constructed the classrooms on the land and many students joined the coaching classes. Besides it, the temple generated some income in the form of "Chadhava" (donation). Mr. Raghuram Meena claimed the income of temple with the contention that he had leased only the land and not the temple.

Further one more problem arose in the company. "Employee Appointment Committee" found that one of the faculties, Mr. Nitesh Gupta was not performing well. He was not justifying his duties. Therefore, "Employee Appointment Committee" decided to terminate him with effect from 31.01.2024 and send him notice of termination by properly addressing and by registered post to Mr. Nitesh Gupta. Mr. Nitesh Gupta refused to accept the notice and returned back it to the postman. After two months, on 01.04.2024, Mr. Nitesh Gupta filed a suit against

the company for claiming the salary for the period from 01.01.2024 to 31.03.2024 with the view that his appointment cannot be terminated because of two reasons:

- (i) "Employee Appointment Committee" was established just to appoint the employees. They are not authorised for their termination.
- (ii) Mr. Nitesh Gupta's refused to accept the notice of termination with the contention that it was not properly served to him.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following MCQs (11-13) given herein under: -

11. Whether Mr. Raghuram Meena is correct in his claim? Whether he may claim the income of temple:
- (a) Yes, Mr. Raghuram Meena was correct in his views as he leased only land not the temple, situated on such land.
 - (b) Yes, as temple is a constructed building, not land.
 - (c) No. 'Immovable Property' in terms of the General Clauses Act, 1897 includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. So, benefits attached to land and income from temple will be of Tech Inspiration Private Limited.
 - (d) No. It is the right of Tech Inspiration Private Limited to decide that who will claim the income of temple.
12. Whether "Employee Appointment Committee" may terminate Mr. Nitesh Gupta even the authority letter given to "Employee Appointment Committee" has no specific clause authorizing it for termination of employees?
- (a) No, as "Employee Appointment Committee" was authorised only for appointment and not for termination of employees.
 - (b) Yes, because section 16 of the General Clauses Act, 1897, provides that unless a different intention appears, power to appoint to include power to suspend or dismiss.
 - (c) No, because section 16 of the General Clauses Act, 1897, provides that power to appoint does not include power to suspend or dismiss.
 - (d) No, It's only board of directors of Tech Inspiration Private Limited who has the right to terminate its employees in board meeting.
13. Whether the refusal to accept the notice sent by post, by Mr. Nitesh Gupta would be termed as not serving of notice of termination?
- (a) Yes, as Mr. Nitesh Gupta had not accepted the notice.
 - (b) Yes, refusal to accept the post will always be considered as not served.
 - (c) No, because as per section 27 of the General Clauses Act, 1897 the service by post shall be deemed to be effected by properly addressing, pre-paying, and posting by registered post.

- (d) No, Mr. Nitesh Gupta had the information of sending of notice.
14. Mr. Amar (a resident individual) want to remit US\$ 60,000 to his son in the USA after winning a big lottery. Considering the provisions of the Foreign Exchange Management Act, 1999, choose the correct action which Mr. Amar would take to remit the said amount to his son in the USA.
- (a) Visit a local bank and request a direct transfer to his son's US bank account.
 - (b) Cannot remit the said amount as remittance out of lottery winnings is prohibited.
 - (c) Travel to the USA personally with the cash winnings, to give it to his son.
 - (d) Convert the US Dollar winnings into a different currency before sending it to his son.
15. Mr. Prakhar, an Indian Resident individual, wishes to obtain Foreign Exchange for a gift remittance totaling US\$ 50,000. Which of the following statements accurately reflects the regulatory requirement under the Foreign Exchange Management Act, 1999 (FEMA)?
- (a) Mr. Prakhar can freely remit US\$ 50,000 for the gift as it is a current account transaction and the amount of gift remittance is less than US\$ 2,50,000.
 - (b) Mr. Prakhar must seek prior approval from the RBI for the remittance exceeding US\$ 50,000.
 - (c) Mr. Prakhar must seek prior approval from the RBI for any gift remittance, regardless of the amount.
 - (d) Mr. Prakhar does not need to comply with any FEMA requirements as gift remittance does not fall under the purview of the FEMA 1999.

PART – II DESCRIPTIVE QUESTIONS

Question No.1 is compulsory. Candidates are required to answer any four questions from the remaining five questions.

Wherever necessary, suitable assumptions may be made and disclosed by way of a note.

Working notes should form part of the answers.

Maximum Marks – 70 Marks

PART II- Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) The information extracted from the audited Financial Statement of Resolution Private Limited as on 31st March, 2023 is as below:

- (1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each. There is no change in the paid-up share capital thereafter.
- (2) The turnover is ₹ 2,00,00,000.

It is further understood that Yellow Private Limited, which is a public limited company is holding 2,00,000 equity shares, fully paid-up, of Resolution Private Limited. Resolution Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2023-24. The ROC has issued a notice to Resolution Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

- (i) Whether Resolution Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
- (ii) Whether Resolution Private Limited has defaulted in filing its financial statement?

(5 Marks)

- (b) The balances extracted from the financial statement of Pacific Limited are as below:

Sr. No.	Particulars	Balances as on 31-03-2023 as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2023 (Provisional ₹ in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether Pacific Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2023-24. **(3 Marks)**

- (c) Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrant to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013? **(2 Marks)**

- (d) Mr. Pravesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) US\$ 140,000 for studies abroad on the basis of estimates given by the foreign university.
- (ii) U.S. \$ 10,000 for remittance towards hiring charges of transponders.

Advise him whether he can get Foreign Exchange, as per the provisions of the Foreign Exchange Management Act, 1999. **(4 Marks)**

2. (a) Samayak Limited is a company engaged in the business of manufacturing papers. Kindly explain the provisions related to quorum in meeting as per the provisions of the Companies Act, 2013.

(5 Marks)

- (b) "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." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard. **(5 Marks)**

- (c) Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice? Give your answer with reference to the provisions of the General Clauses Act, 1897. **(4 Marks)**

3. (a) Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company? **(5 Marks)**
- (b) The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid? **(5 Marks)**
- (c) Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition. **(4 Marks)**
4. (a) The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly mention any four matters to be furnished in the said statement. **(5 Marks)**
- (b) Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ₹ 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP. **(5 Marks)**
- (c) In what way are the following terms considered as external aid in the interpretation of statutes:
 - (i) Historical Setting
 - (ii) Use of Foreign Decisions **(4 Marks)**
5. (a) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. **(5 Marks)**
- (b) ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013. **(5 Marks)**

- (c) A confusion regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of the financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year? **(4 Marks)**
6. (a) What is 'Floating Charge'? When does it get crystallised? **(5 Marks)**

OR

- (a) Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of a company. Also, state the power of the Registrar to grant extension of time for the First Annual General Meeting. Explain with the help of an example. **(5 Marks)**
- (b) Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company. **(5 Marks)**
- (c) Ms. Prabha, a classical dancer of Bharatnatyam, wants to go to the USA for a performance. In this connection she requires foreign exchange drawal of US\$ 50,000. Explain Ms. Prabha, the provision of the Foreign Exchange Management Act, 1999, in respect of permission required for such drawal of foreign exchange. **(4 Marks)**

MODEL TEST PAPER 2
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

ACC Private Limited was incorporated in July 2001. It is registered with an authorised share capital of ₹ 20 crore divided into 2 crore equity shares of ₹ 10/- each. The paid-up share capital of the company is ₹ 10 crore divided into 1 crore equity shares of ₹ 10/- each.

The Board of Directors of the company in their meeting held on 11th August, 2023 declared interim dividend. The Annual General Meeting of the company was held on 1st September, 2023. The company had incurred losses in the previous financial year as well as in the current financial year upto the period ended June 30, 2023. In the previous five financial years, the company had declared the dividend as under:

Financial Year Ended	Dividend declared per share (₹)	Dividend declared rate (%)
March 31, 2023	Nil	Nil
March 31, 2022	1.00	10%
March 31, 2021	1.10	11%
March 31, 2020	1.30	13%
March 31, 2019	1.20	12%

The company has deposited the amount of dividend declared in a separate account with ABC Bank on August 14, 2023. Out of the total dividend declared, ₹ 60,000 payable to few equity shareholders remains unclaimed even after the expiry of statutory period within which dividend was required to be paid and had been transferred to a separate bank account Unpaid Dividend Account on 20th September 2023. The company prepares a statement containing the names of shareholders, their last known address and the unpaid dividend amount to such each shareholder and place on its website.

Meanwhile, the company obtained a term loan of ₹ 15 crore from Laxmi Bank Limited on August 20, 2023, securing it with a charge on the company's assets, including its own buildings (in India and Germany) and intangible assets (trademark right over the company's logo). According to the Companies Act, 2013, the company was required to register this charge with the Registrar within a specified

timeframe. However, the company failed to complete the registration process within the prescribed timeline.

The Board of Directors has requested their Company Secretary to confirm them whether they are required to incur expenditure towards Corporate Social Responsibility during the financial year 2023-2024 and is required to constitute CSR committee.

The financial particulars in respect of immediately preceding financial year are as under:

S. No.	Particulars	Amount (₹ in crore)
1	Net worth	100
2	Turnover	1010
3	Net Profit	4.9
4	Borrowings	60

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5) given herein under: -

1. The company can create charge in favour of the lender on the assets which are:
 - (a) Tangible Assets and situated in India only
 - (b) Intangible Assets and situated in India only
 - (c) Assets that are tangible or otherwise and situated in India or Germany
 - (d) Assets that are tangible or otherwise and situated in India only
2. The maximum rate at which interim dividend can be declared by the Board during the current financial year is as under: -
 - (a) The board cannot declare the interim dividend at a rate higher than the average dividend declared by the company immediately during preceding two financial years, i.e. 5%.
 - (b) The board cannot declare the interim dividend at a rate higher than the average dividend declared by the company immediately during preceding three financial years, i.e. 7%.
 - (c) The board cannot declare the interim dividend at a rate higher than the average dividend declared by the company immediately during preceding four financial years, i.e. 8.5%.
 - (d) The board cannot declare the interim dividend at a rate higher than the average dividend declared by the company immediately during preceding five financial years, i.e. 9.2%.
3. In respect of dividend declared which of the Statement is not correct?
 - (a) The company has transferred the dividend amount to separate bank account within 5 days from the date of declaration of dividend.

- (b) The company is required to pay dividend within 30 days from the date of declaration of dividend.
 - (c) The company is required to transfer the Unpaid dividend to a separate bank account within 10 days from the date of expiry of statutory period from the date of declaration of dividend.
 - (d) The company is required to prepare a statement containing the names of shareholders, their last known address and the unpaid dividend amount to such each shareholder and place on its website within 90 days from the date of transferring the amount to Unpaid Dividend Account.
4. Choose the correct option in terms that whether the provisions of Corporate Social Responsibility are applicable to ACC Private Limited.
- (a) The provisions of Corporate Social Responsibility are not applicable to ACC Private Limited as it is a private limited company.
 - (b) Yes, as ACC Private Limited is having turnover of more than ₹ 1000 crore.
 - (c) Yes, as ACC Private Limited is having net profit of more than ₹ 2.5 crore in the immediately preceding financial year.
 - (d) Yes, as ACC Private Limited is having net worth of more than ₹ 50 crore in the immediately preceding financial year.
5. The notice for the Annual General Meeting should be served by:
- (a) 6th August 2023
 - (b) 7th August 2023
 - (c) 8th August 2023
 - (d) 10th August 2023

Case Scenario 2

Sudeep and Ankit are very fast friend since long. They decided to run a service unit which will provide “Financial and Investment Consultancy Services”. For this purpose they formed a limited liability partnership under the name M/s Etharkkum Advisors LLP on 17th April 2020. For this purpose, they prepared a Limited Liability Partnership Deed of which one of the clauses provides that a new partner may be admitted in the LLP with capital contribution which may be in kind or cash. Further new partner is also required to deposit the agreed amount of capital contribution within six months from the date of his admission.

After some time, office of the firm was destroyed due to an earthquake and the LLP was in urgent need of an office premises and some funds for some renovation work.

It is also informed that M/s Etharkkum Advisors LLP approached Manoj on 1st January 2023 to join the firm as third partner. Manoj was out of India for the period from 1st September 2021 to 23rd December 2022. He agreed to join the LLP and also agreed to contribute his office premises at Sanjay Place, Palwal and funds of ₹ 5,00,000 as Capital Contribution in the firm. Manoj joined the firm on 25th January 2023 as limited liability partner. The above said office premises was purchased by Manoj five years ago for ₹ 25,00,000 but the fair market value of this

office on 25th January 2023 was ₹ 32,25,000 and on 1st January 2023 was ₹ 30,00,000. Manoj has provided his office to the firm with effect from his admission and promised to deposit the agreed amount of ₹ 5,00,000 within six months as provided in the partnership deed. Before Manoj could deposit the amount with the firm, it was dissolved. Manoj denied to deposit the amount of ₹ 5,00,000 with the contention that he is liable only upto the amount contributed in the firm on the date of dissolution. A creditor of the firm sued Manoj to deposit the said amount so that the firm may pay off his liability.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8) given herein under: -

6. Whether Manoj could be considered as resident or not as per the Limited Liability Act, 2008?
 - (a) Manoj could not be considered resident in India as he was not in India for 182 days in preceding one year
 - (b) Manoj could not be considered resident in India as he was not in India for 120 days in preceding one year i.e. only for 33 days from 24th December 2022 to 25th January 2023
 - (c) Manoj could not be considered as he was not in India for 182 days during the financial year
 - (d) Manoj will be considered as resident in India as he was in India for 120 days during the financial year (2021- 2022)
7. What would be the worth of Capital Contribution by Manoj?
 - (a) ₹ 25,00,000
 - (b) ₹ 32,25,000
 - (c) ₹ 37,25,000
 - (d) ₹ 35,00,000
8. Whether Manoj will be liable to contribute ₹ 5,00,000 after dissolution of the firm?
 - (a) Yes, because a partner is personally liable for the deficiency arising at the time of dissolution of LLP.
 - (b) No, because a partner is never personally liable for the deficiency arose at the time of dissolution of LLP.
 - (c) Yes, the partner is under obligation to contribute money also to LLP as per the agreement.
 - (d) No, because a partner is personally liable only upto the amount contributed to the LLP on the date of dissolution of LLP.
9. Finload Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 57 persons, of which six are qualified institutional buyers and remaining are individuals.

Choose the correct statement as per the provisions of the Companies Act, 2013:

- (a) Finload Limited company is a public limited company hence it can not issue shares through private placement.
 - (b) Since, Finload Limited has made an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
 - (c) Finload Limited has made an offer or invitation to less than the prescribed number of persons as qualified institutional buyers are not counted to calculate the prescribed limit.
 - (d) Finload Limited cannot issue shares to qualified institutional buyers, as under private placement shares cannot be issued to qualified institutional buyers.
10. Company X, a leading automobile manufacturer, has invested in Company Y, a start-up specializing in electric vehicle technology. Company X holds a 25% stake in Company Y and actively participates in its strategic decisions. Based on the provisions of the Companies Act 2013 regarding associate companies, which of the following statements is correct?
- (a) Company X's investment in Company Y does not qualify as an associate company because Company X does not have control of at least 50% of the total voting power.
 - (b) Company Y qualifies as an associate company of Company X since Company X holds a 25% stake in Company Y and actively participates in its strategic decisions.
 - (c) Company Y cannot be considered an associate company of Company X because it is a start-up and does not meet the minimum criteria for significant influence.
 - (d) Company X's investment in Company Y falls under the category of joint venture and does not qualify as an associate company according to the Companies Act 2013.

Case Scenario 3

M/s Aryan & Aryan LLP was registered on 2nd July 2019. Sudeep and Ankit were partners in the firm. Both Sudeep and Ankit were also the designated partners in this firm. The LLP deals in manufacturing and trading of electric ceiling fans. One day Sudeep met with Mr. Kishore, a director of Krtiken Electronics Private Limited. After discussion, Mr. Kishore showed interest that Krtiken Electronics Private Limited may work with M/s Aryan & Aryan LLP as partner.

Krtiken Electronics Private Limited was incorporated on 1st June 2017 with the object to deal in electronics. The memorandum and articles of association of Krtiken Electronics Private Limited also authorised it to work as partner in a LLP.

The partners of M/s Aryan & Aryan LLP and directors of Krtiken Electronics Private Limited approached a professional consultant Mrs. Archika Jain for providing the procedure for adding Krtiken Electronics Private Limited as a partner in M/s Aryan

& Aryan LLP. She advised that Krtiken Electronics Private Limited could not be the partner in M/s Aryan & Aryan LLP because as per Limited Liability Partnership Act 2008, an individual or a body corporate can be a partner in LLP. She informed that the term 'body corporate' was defined in the Limited Liability Partnership Act, 2008 as a company which is defined in section 3 of the Companies Act, 1956. As Krtiken Electronics Private Limited is registered under Companies Act 2013, it cannot be termed as body corporate. On the advice of Mrs. Archika Jain, M/s Aryan & Aryan LLP dropped the idea to add Krtiken Electronics Private Limited.

It is further informed that Ms. Shanaya was admitted as a new partner in the firm on 17th January 2024. The firm intimated the registrar about her admission on 31st January 2024. On 3rd February 2024, while going to office Ms. Shanaya met with an accident and lost her memory. The doctor declared her of unsound mind to work as partner in M/s Aryan & Aryan LLP. It was also confirmed by a competent court.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 therein, choose the correct answer (one out of four) of the following MCQs (11-13) given herein under:-

11. Whether Krtiken Electronics Private Limited could be partner in M/s Aryan & Aryan LLP?
 - (a) No, as Krtiken Electronics Private Limited is not a body corporate as per the definition of "Body Corporate" given in Limited Liability Partnership Act, 2008.
 - (b) Yes, because section 8 of the General Clauses Act, 1897 provides where any Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. Therefore, after the enactment of Companies Act, 2013, the definition of "Body Corporate" should be construed as a company which is defined in section 2(20) of the Companies Act, 2013.
 - (c) No, as provisions of section 8 of the General Clauses Act, 1897 will not be applicable because the Limited Liability Partnership (Amendment) Act, 2021, which amended the definition of "Body Corporate" considering the company registered under Companies Act, 2013, come to effect from 01.04.2022.
 - (d) Yes, as the provisions of the General Clauses Act, 1897 are not applicable while interpreting the provisions of the Limited Liability Partnership Act, 2008.
12. Following the provisions of Limited Liability Act, 2008 read with the General Clauses Act, 1897, what should be the last date to inform the registrar about the admission of Ms. Shanaya.
 - (a) 15th February 2024
 - (b) 16th February 2024
 - (c) 17th February 2024

(d) 18th February 2024

13. What would be the status of Ms. Shanaya in the firm, M/s Aryan & Aryan LLP after the accident?

(a) She would continue as a partner in M/s Aryan & Aryan LLP even after being declared as of unsound mind.

(b) Section 24(2) of the Limited Liability Partnership Act, 2008 provides that a person shall cease to be a partner of a LLP if he is declared to be of unsound mind by a competent court. As this sub – section provides only for male person (“he”), she would continue as a partner in M/s Aryan & Aryan LLP.

(c) Following the provisions of the General Clauses Act, 1897 which provides that in all legislations and regulations, unless there is anything repugnant in the subject or context words importing the masculine gender shall be taken to include females. Hence, Ms. Shanaya will cease to be a partner M/s Aryan & Aryan LLP.

(d) She can continue as partner if all other partners agree for that.

14. HBL Private Limited is a project engineering, procurement and construction company. The company has bagged a contract from the Government of State of Tamil Nadu for construction of Water Dam. The company has involved a project consultancy firm situated in Netherlands for preparing techno-economic feasibility report to enable it to start construction work of dam. The company had paid USD 7,000,000 to vendor of Netherlands.

The company also availed the services of Software Company situated in UK for the migration of its accounting software from SAP to Oracle for which the Company had paid USD 2,000,000 to the software company.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned statement is correct:

(a) The company can make payment of USD 7,000,000 and USD 2,000,000 without any approval.

(b) The company can make payment of USD 7,000,000 without any approval and USD 2,000,000 after obtaining prior approval of the Reserve Bank of India (RBI).

(c) The company can make payment of USD 7,000,000 and USD 2,000,000 after obtaining prior approval of RBI.

(d) The company can make payment of USD 7,000,000 after obtaining prior approval of RBI and USD 2,000,000 without any approval.

15. Ms. Shalini Gupta had enrolled her for management course of three years with IIM, Ahmedabad. Out of three years, two years of educational course would be provided at the campus of IIM, Ahmedabad and one year of educational course would be provided at University of Auckland under student exchange program. Ms. Shalini Gupta is required to pay tuition fee of ₹10 lakh directly to IIM, Ahmedabad for two years course and USD 200,000 to University of Auckland.

Ms. Shalini had left India on 20th August 2022 to complete her degree from University of Auckland. In the last month of final year of the course, she got an offer from one of the reputed company situated in Auckland and had accepted the offer and she decided to work there. On 1st September 2023, Ms. Shalini had visited India for 30 days to meet her family and on 1st October 2023 had left India to carry on her employment.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned options correctly determined the residential status of Ms. Shalini Gupta:

- (a) Ms. Shalini Gupta to be treated as resident in India for Financial Year (FY) 2023-2024 and FY 2024-2025.
- (b) Ms. Shalini Gupta to be treated as resident in India for FY 2022-2023 and FY 2023-2024.
- (c) Ms. Shalini Gupta to be treated as non-resident for FY 2023-2024 and FY 2024-2025 as she left India for higher studies.
- (d) Ms. Shalini Gupta to be treated as resident in India for FY 2023-2024 since she stays in India for more than 182 days and non-resident for FY 2024-2025.

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued ₹ 1,00,000 convertible preference shares (carrying right to vote) of ₹ 100 each and 10,00,000 equity shares of ₹ 10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:
 - (i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?
 - (ii) XYZ Private Limited is a public company as per the Companies Act, 2013? **(5 Marks)**
- (b) HelpIndia Limited was incorporated on 1st April 2022. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2022-23	₹ 11.00 crore	₹ 4 crore
2023-24	₹ 10.00 crore	₹ 5 crore

HelpIndia Limited is considering allocating the minimum required amount for Corporate Social Responsibility (CSR) activities to be undertaken

during the financial year 2024-25, provided it is mandatory to do so. They seek advice on this matter.

Furthermore, HelpIndia Limited requests assistance in calculating the minimum amount to be allocated, if necessary, considering the relevant provisions outlined in the Companies Act, 2013. **(5 Marks)**

- (c) Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

(4 Marks)

2. (a) Explain the following as per the provisions of the Companies Act, 2013:
- (i) Abridged Form of Annual Return
 - (ii) Signing of Annual Return **(5 Marks)**

- (b) APR Limited, a company renowned for manufacturing various types of mats, has established a strong brand presence and garnered a commendable reputation over the years. As of March 31, 2023, its Balance Sheet reflects the following financial position:

- 1. Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹ 2,50,00,000
- 2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid-up) ₹ 1,00,00,000
- 3. Free Reserves ₹ 3,00,00,000

The Board of Directors intends to propose a bonus issue wherein existing shareholders would receive 1 additional share for every 2 shares held. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

(5 Marks)

- (c) Explain the following with reference to the provisions of the General Clauses Act, 1897:
- (i) Movable Property
 - (ii) Oath **(4 Marks)**

3. (a) Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)? **(5 Marks)**

- (b) Wood Limited has received ₹ 4,00,000 as a non-interest bearing security deposit under a contract of employment, from its employee Mr. Cotton. Mr. Cotton draws an annual salary of ₹ 3,85,000.
- Analyse under the provisions of the Companies Act, 2013, whether the said amount received by Wood Limited will be considered as deposits or not. **(5 Marks)**
- (c) Explain interpretation of statute aid- 'Read the Statute as a Whole'. **(4 Marks)**
4. (a) Crystal Limited recently received a communication from the Central Government requesting the preparation of periodical financial results along with the completion of either a full audit or a limited review of these financial results. The Board of Directors, however, has raised an objection, arguing that Crystal Limited, being an unlisted company, are not obligated to prepare periodical financial results.
- Analyze the situation, citing relevant provisions of the Companies Act, 2013, with respect to the company's obligation regarding the preparation of periodical financial results. **(5 Marks)**
- (b) Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm. **(5 Marks)**
- (c) In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes. **(4 Marks)**
5. (a) Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (b) Kesar Limited, an unlisted company furnishes the following data:
- (a) Paid-up share capital as on 31st March 2024 ₹ 49 Crore.
 - (b) Turnover for the year ended 31st March 2024 ₹ 100 Crore
 - (c) Outstanding loan from bank as on 3rd March 2024 is ₹ 102 crore (₹ 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 ₹ 95 crore after repayment.
- Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025. **(5 Marks)**
- (c) Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding

the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023. **(4 Marks)**

6. (a) Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'. **(5 Marks)**

OR

- (a) Enumerate the provisions of the Companies Act, 2013 in respect to the following:

- (i) Matters not to be included in the minute, as per the opinion of the Chairman.
- (ii) Maximum time allowed for entering minutes of proceedings.

(5 Marks)

- (b) What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014? **(5 Marks)**

- (c) University of Oxford is one of the leading institutes of UK. In the month of May 2024, they are planning a cultural event in UK. The University has invited Ms. Kanika Tripathi and her group, an Indian artist to perform in the event.

Ms. Kanika Tripathi needs to withdrawal foreign exchange of USD 75,000 for the purpose of visit to UK for performing at cultural event of University of Oxford in UK. Advise whether she can withdraw Foreign Exchange and if so, under what conditions? **(4 Marks)**

MODEL TEST PAPER 3
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

In the busy city of Nagpur, there is a company “Transfiguration Industries Limited”. As the Annual General Meeting (AGM) of the company approached, the Board of Directors of Transfiguration Industries Limited gathered to discuss the appointment and removal of auditors in accordance with the Companies Act, 2013.

Mr. Jack, the Chairman of the board, opened the meeting by addressing the importance of adhering to the provisions outlined in Sections 139, 140, and 141 of the Companies Act, 2013. He emphasized the significance of appointing auditors who would uphold integrity and transparency in the company's financial reporting.

As the discussion ensued, Ms. Sara, a diligent board member, raised a question regarding the tenure of auditors. She asked whether there were any restrictions on the duration for which an auditor could be appointed. The board referred to Section 139(2) of the Companies Act, 2013, and informed about maximum period for which auditors can be appointed.

Dr. Patel, a seasoned member of the board, then inquired about the procedure for appointing the first auditor of the company. Mr. Jack explained that according to Section 139(1) and (6) of the Companies Act, 2013, the first auditor would be appointed by the Board of Directors within thirty days from the date of registration of the company.

Amidst the discussion, Mr. CS, the Company Secretary, emphasized the importance of obtaining the auditor's written consent and certificate before their appointment.

Finally, Mr. Jack concluded the meeting by reiterating the company's commitment to corporate governance and regulatory compliance. He emphasized the role of the Audit Committee as outlined in the Companies Act, 2013.

Answer the following questions in the light of the given facts and the relevant legal provisions as per the Companies act, 2013:

1. State which is the correct statement as regards the maximum tenure for which an individual auditor and an auditor firm can be appointed under the Companies Act, 2013?
 - (a) Both for five years

- (b) Individual auditor for more than one term and an auditor firm for two terms
 - (c) Individual auditor for one term of five consecutive years and an auditor firm for two term of five consecutive years
 - (d) Individual auditor for more than two terms and an auditor firm for more two terms of five consecutive years
2. State on the correctness of the procedure explained for an appointment of the first auditor of a company by Mr. Jack?
- (a) Incorrect. Requirement of Act specifies appointment of first auditor is to be made by the shareholders in an EGM within ninety days
 - (b) Correct. Requirement of Act specifies appointment of first auditor by the Board of Directors within 30 days from the date of registration of the company
 - (c) Incorrect. Requirement of Act specifies appointment of first auditor by the Board of Directors within 30 days on the advise of Company Secretary
 - (d) Incorrect. Requirement of Act specifies appointment of first auditor by the Registrar of Companies (ROC) within 15 days
3. What is the requirement before appointing an auditor as per Section 139(1) of the Companies Act, 2013?
- (a) Auditor's written consent and certificate
 - (b) Approval from the Ministry of Corporate Affairs
 - (c) Appointment by the Registrar of Companies (ROC)
 - (d) Recommendation from the Audit Committee
4. During the meeting, Ms. Sara asks whether a relative of a director can be appointed as the company's auditor. What does the Companies Act, 2013, state with regard to disqualification of auditors in this case?
- (a) Relatives of directors can be appointed as auditors, without any restrictions if they are qualified Chartered Accountants.
 - (b) Relatives of directors cannot be appointed as auditors under any circumstances
 - (c) Relatives of directors can be appointed as auditors if their pecuniary relationship with the company is below the prescribed threshold
 - (d) Relatives of directors can only be appointed with Registrar of Companies approval.
5. If the Board of Directors of Transfiguration Industries Limited seeks to remove an auditor before the expiry of their term, what procedure must be followed as per the provisions of the Companies Act, 2013?
- (a) The Board can remove the auditor by passing a resolution in a board meeting.

- (b) The Board must obtain prior approval from the Audit Committee and inform the Registrar.
- (c) The company must obtain prior approval from the Central Government and pass a special resolution in a general meeting.
- (d) The Board must notify the Comptroller and Auditor General of India, even if Transfiguration Industries Limited is not a Government company.

Case Scenario 2

In the heart of Mumbai, two ambitious entrepreneurs, Ram and Preet, decided to establish a limited liability partnership (LLP) named "TechGenius LLP" to revolutionize the IT industry. As they delved into the legal requirements of forming an LLP, they stumbled upon the crucial provision of having designated partners.

Ram, a tech-savvy enthusiast, and Preet, a seasoned business strategist, understood the significance of complying with the regulations to ensure smooth operations of their venture. They gathered their legal team to discuss the implications of the designated partner requirement under the LLP Act.

With the assistance of their legal advisor, Ms. Alia, they navigated through the provisions of the LLP Act, particularly focusing on Sections 7 and 9, which outlined the obligations and penalties related to designated partners.

As they embarked on their journey to establish TechGenius LLP, they encountered various challenges and decisions regarding the appointment and responsibilities of designated partners.

Answer the following MCQs (6-8) in the light of the Limited Liability Partnership Act, 2008

6. Ram and Preet want to ensure compliance with the LLP Act regarding the number of designated partners. As per the Act what is the minimum requirement for designated partners that an LLP must have?
 - (a) Maximum One
 - (b) At least Two
 - (c) At least Five
 - (d) No mandatory requirement
7. What is the meaning of "resident in India" as per the LLP Act?
 - (a) A person owning property in India
 - (b) A person holding citizenship of India
 - (c) A person who has stayed in India for a minimum of one hundred twenty days during the financial year
 - (d) A person who has permanent residence in India
8. Suppose if Ram is declared insolvent during his tenure as a designated partner, what will happen under the LLP Act?
 - (a) Ram can continue as a designated partner until the LLP appoints a replacement.

- (b) Ram is immediately disqualified from being a designated partner.
- (c) Ram's status as a designated partner must be reviewed by the LLP and till then he can continue as a partner in the LLP.
- (d) The LLP must notify the Registrar, but Ram can continue in his role.

Case Scenario 3

XYZ Limited was required to file an appeal with the National Company Law Tribunal (NCLT) under a statutory regulation that prescribed a filing deadline of October 2, 2025. However, as October 2 was a public holiday, the company's legal counsel did not file the appeal on that day, unaware of the legal provisions concerning deadlines falling on holidays. The office reopened on October 3, 2025, and the legal counsel filed the appeal on the same day.

In a separate matter, XYZ Limited was involved in a property dispute where it needed to measure the distance between two boundary points for evidence submission. The applicable Regulation, governed by a Central Act enacted after 1950, required distances to be measured on a straight line along a horizontal plane unless otherwise specified. However, the company measured the distance by tracing the natural curvature of the land instead of adhering to the prescribed method.

Answer the following MCQs (9-11) in the light of the General Clauses Act, 1897.

9. According to the provisions of the General Clauses Act, 1897, was the filing of XYZ Limited's appeal on October 3, 2025, considered valid?
 - (a) Yes, because the office was closed on October 2, 2025, and filing on the next open day is valid.
 - (b) No, because the deadline was October 2, 2025, and it was not adhered to.
 - (c) Yes, but only if the Tribunal provided an extension.
 - (d) No, because the legal counsel failed to check whether holidays impact the deadline.
10. In the property dispute involving XYZ Limited, was the method of measuring the distance valid?
 - (a) Yes, because it followed the natural curvature of the land.
 - (b) No, because distances under Central Acts must be measured in a straight line on a horizontal plane unless specified otherwise.
 - (c) Yes, if the parties mutually agreed to the method.
 - (d) No, because measuring methods are irrelevant to the dispute.
11. If the Regulation explicitly required "measurement by natural terrain," would XYZ Private Limited's method of measuring the distance along the land's natural curvature be valid?
 - (a) Yes, because the specific regulation would take precedence over the general rule.

- (b) No, because Central Acts universally mandate straight-line measurement on a horizontal plane.
 - (c) Yes, provided the specific regulation was enacted only by a State Legislature.
 - (d) Yes, provided the specific regulation was approved by a Court.
12. "Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Here, the words 'significant influence' means:
- (a) Control of at least 10% of total voting power
 - (b) Control of at least 15% of total voting power
 - (c) Control of at least 20% of total voting power
 - (d) Control of at least 25% of total voting power **(2 Marks)**
13. Indus Labs Limited and Magica Biotech Limited issued preference shares with distinct dividend payment structures. Indus Pharma Labs Limited stipulates that the preferential dividend may be an amount, such as ₹ 5,00,000 in one year, payable to preference shareholders before any payments are made to ordinary shareholders. In contrast, Magica Biotech Limited specifies that the amount payable as a preferential dividend is calculated at a rate of 8 percent of the nominal value of each share.
How do Indus Labs Limited and Magica Biotech Limited differ in their payment of preferential dividends? Is it the valid mode of payment of dividend under the Companies Act, 2013.
- (a) Indus Labs pays dividends at a fixed rate, while Magica Biotech pays a fixed amount. Yes, it's a valid mode of payment of dividend
 - (b) Indus Labs pays a fixed amount as dividends, while Magica Biotech pays dividends at a fixed rate. Yes, it's a valid mode of payment of dividend
 - (c) Both companies pay dividends at a fixed rate. No, it's not a valid mode of payment of dividend
 - (d) Both companies pay a fixed amount as dividends. Yes, it's a valid mode of payment of dividend **(2 Marks)**
14. TechWise Ltd., an Indian company, wishes to make a donation of USD 36,000 for the creation of a Chair in a reputed educational institute located abroad. The company's foreign exchange earnings during the previous three financial years amount to USD 3,500,000. What action should TechWise Ltd. take regarding this donation under the Foreign Exchange Management Act (FEMA), 1999?
- (a) TechWise Ltd. can proceed with the donation without seeking prior approval.
 - (b) TechWise Ltd. should seek prior approval from the Reserve Bank of India before making the donation.

- (c) TechWise Ltd. should limit the donation amount to USD 5,000,000 to avoid seeking prior approval.
- (d) TechWise Ltd. should seek approval from the Ministry of Finance before making the donation. **(2 Marks)**
15. Mr. Ramit, an Indian resident, wants to send a gift of USD 150,000 to his friend in the USA and donate USD 90,000 to a charitable organization abroad in a financial year. He approaches his bank to remit the amount under the Liberalized Remittance Scheme (LRS).
- Considering the provisions of the Foreign Exchange Management Act (FEMA), 1999, what will be the correct course of action?
- (a) The bank can process both transactions since gifts and donations are permitted under LRS, and the total amount is within the USD 250,000 limit.
- (b) The bank can process only one transaction since the combined amount exceeds the permissible limit under LRS.
- (c) The bank cannot process the transactions as remittance for gifts and donations is not permitted under LRS.
- (d) The bank must obtain prior approval from the Reserve Bank of India (RBI) before processing these remittances. **(2 Marks)**

PART – II Descriptive Questions (70 Marks)

Question No. 1 is compulsory.

*Attempt any **four** questions out of the remaining **five** questions.*

1. (a) MNO limited has the following equity share capital –

Class-1: Equity Share Capital – 3,00,000 equity shares of ₹ 10 each. (1 voting right for every 1 share)	₹ 30,00,000
Class-2: Equity share Capital – 50,000 equity shares of ₹ 10 each. (1 voting right for every 5 shares)	₹ 5,00,000

At the time of issue, the company had fulfilled all the conditions related to the issue of equity share capital.

The company wants to vary the voting rights of class 2 equity share capital– 1 voting right for every 5 shares to 1 voting right for every 10 shares.

The Company's Memorandum and Articles of Association have given the company the power to make the variation. The holders of 40,000 equity shares have their consent in writing for this variation.

Out of dissenting shareholders, the holders of 4,500 equity shares want to apply to the Tribunal against the company's action.

Examine, with reference to the relevant provisions of the Companies Act, 2013-

- (i) Whether a company can change the rights of its shareholders?
- (ii) Whether the dissenting shareholders can apply to the Tribunal?

(5 Marks)

- (b) BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis. You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the Companies Act, 2013.

(5 Marks)

- (c) Mr. L was employed as a fashion designer in Elegant Textile Ltd., a public limited company in Gurugram, India during the financial year 2023-24. He had efficiently provided his services for 183 days during the above said period. On 01.04.2024, Mr. H. the Human Resource Manager of Jeff Fashion Ltd., Paris (a foreign country) offered him a better employment opportunity in such company.

On 02.04.2024, Mr. L. left India for taking up employment as a production controller at Jeff Fashion Ltd. in Paris. On 30.04.2024 he flew back to India for a 10 day family function in Manali, India.

In light of the provisions of the Foreign Exchange Management Act, 1999, elucidate: The residential status of Mr. L-

- (i) On his return for attending the family function on 30.04.2024.
- (ii) In case, instead of vacation, he joins an employment in an Indian company after arriving on 30.04.2024.

(4 Marks)

2. (a) Referring to the provisions of the Companies Act, 2013, answer the following queries:

- (i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?
- (ii) Explain the consequences of non-allotment of shares within the stipulated timeline.

- (iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement? **(5 Marks)**
- (b) (i) In the circumstance where Mr. M and Mr. P, joint shareholders of Primal Private Limited holding 500 equity shares, have conflicting views on one special business (related to proposed changes in the Articles of Association) at the extra-ordinary general meeting, Mr. M is endorsing the resolution, and Mr. P is dissenting. Determine the procedure for casting the vote in the event of such a situation, as per the guidelines outlined in the Companies Act, 2013. **(3 Marks)**
- (ii) Okara Limited, a company, having a net worth of ₹110 crore and a turnover of ₹450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public. **(2 Marks)**
- (c) The Board of Directors of Cool Private Limited, through a resolution passed in the board meeting, granted authorization to Mr. Sharad, the CEO of the company to appoint two employees for the procurement department. Subsequently, Mr. Sharad selected Mr. Suresh and Mr. Hemant for the positions. However, after one month, Mr. Sharad, noticing unsatisfactory performance and lack of honesty in their duties, issued dismissal orders for both employees, citing proper reasons. Mr. Suresh contested his dismissal in the court, arguing that the Board had only empowered Mr. Sharad for appointments and not for dismissals and hence the dismissal order is invalid.
- Assess the validity of Mr. Suresh's argument under the provisions of the General Clauses Act, 1897. **(4 Marks)**
3. (a) "A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." in reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013. **(5 Marks)**
- (b) Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which 14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Mr. Mohan was counted as a single person in these 14 members present. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:
- (i) Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?

- (ii) Whether Mr. Rahi could adjourn the meeting in the current scenario? **(5 Marks)**
- (c) What are the differences between interpretation and construction in the legal context, and how do these two concepts relate to each other as per Interpretation of Statute? **(4 Marks)**
4. (a) The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. In light of the Companies Act, 2013 elucidate the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority. **(5 Marks)**
- (b) A dispute among the partners of Limited Liability Partnership (the LLP) jeopardized the stability of the business. Out of two partners, one due to a quarrel, left the LLP. The other partner alone continued the business of the LLP. You are being an expert in law is requested to explain the provisions governing the LLP being operated by a single partner as per the provisions of the Limited Liability Partnership Act, 2008? **(5 Marks)**
- (c) Explain the term "Generalia specialibus non derogant", in connection with Interpretation of Statutes. **(4 Marks)**
5. (a) Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (b) M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods of 5 years i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam is the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After cooling period of 5 years, Golden Smith Ltd. may appoint M/s Kukreja & Associates or M/s. Krishna & Associates as its auditors.
- Why is Golden Smith Ltd. prohibited from appointing M/s Kukreja & Associates as its audit firm, and for how long does this prohibition apply? **(5 Marks)**
- (c) State the provisions of the General Clauses Act, 1897 relating to 'gender and number'. **(4 Marks)**
6. (a) LKJ Ltd. is a company having paid up share capital of ₹ 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

- (i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?
 - (ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?
 - (iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting? **(5 Marks)**
- (b) ABC Corporation, a multinational conglomerate, plans to issue a prospectus in India for its upcoming public offering of securities. The prospectus includes statements made by various experts regarding the potential growth prospects and financial performance of the company.
- What are the requirements under Section 388 of the Companies Act, 2013, regarding the inclusion of statements made by experts in a prospectus for securities issued by a company incorporated or to be incorporated outside India, and how do these requirements affect the validity of the prospectus? **(5 Marks)**
- (c) Mr. Patel, a resident of India, wants to pay for his child's education fees in the United States. Decide whether the nature of transaction be classified as a current account transaction as per the FEMA, 1999? **(4 Marks)**

MODEL TEST PAPER 4
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

GlobalTech Pvt. Ltd., a technology giant with operations in software development, hardware manufacturing, and IT consulting, has recorded significant financial growth over the past few years. For the financial year 2023-2024, the company reported the following financial metrics:

- Net worth: ₹ 520 crore
- Turnover: ₹ 1,050 crore
- Net profit: ₹ 4.5 crore

In the financial year 2022-2023, GlobalTech Pvt. Ltd. had a net worth of ₹ 480 crore, a turnover of ₹ 1,020 crore, and a net profit of ₹ 4 crore. The company has a subsidiary, TechSubs Ltd., and a foreign subsidiary, GlobalTech International, which has a branch office in India.

GlobalTech Pvt. Ltd. spent ₹ 1.2 crore on various CSR activities during the financial year 2023-2024. However, ₹ 30 lakh remained unspent and was transferred to the Unspent Corporate Social Responsibility Account as per section 135(6) of the Companies Act, 2013.

The company's board comprises members from different parts of the country and they ensure that the administrative overheads do not exceed the prescribed limit of total CSR expenditure.

The company held its annual general meeting on 20th August, 2024 and filed the annual return in compliance with the provisions of the Companies Act, 2013.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5) given herein under: -

1. Based on the financial metrics of GlobalTech Pvt. Ltd., is the company required to constitute a Corporate Social Responsibility (CSR) Committee for the financial year 2023-2024?
 - (a) Yes, because its net worth exceeds ₹ 500 crore.
 - (b) No, because it has not met the required net profit criteria.
 - (c) Yes, because its turnover exceeds ₹ 1,000 crore.

- (d) No, because its net profit is less than ₹ 5 crore.
2. Given that GlobalTech Pvt. Ltd. has ₹ 30 lakh in its Unspent Corporate Social Responsibility Account, which of the following statements is true?
- (a) The company is not required to constitute a CSR Committee if it has unspent CSR funds.
- (b) The company must constitute a CSR Committee in Financial year 2024-2025, as it has balance in Unspent CSR account.
- (c) The company can use the unspent funds for any other business activity.
- (d) The company must transfer the unspent amount to the Prime Minister's National Relief Fund.
3. If GlobalTech Pvt. Ltd. had an average net profit of ₹ 5 crore over the past three immediately preceding financial years, what is the minimum amount it must spend on CSR activities in the financial year 2024-2025?
- (a) ₹ 5 lakh
- (b) ₹ 10 lakh
- (c) ₹ 20 lakh
- (d) ₹ 30 lakh
4. GlobalTech Pvt. Ltd. must ensure that the administrative overheads do not exceed a certain percentage of the total CSR expenditure. What is this percentage?
- (a) 2%
- (b) 5%
- (c) 10%
- (d) 15%
5. What is the latest date by which GlobalTech Pvt. Ltd. must it file its annual return with the Registrar of Companies (RoC)?
- (a) 10th September 2024
- (b) 15th September 2024
- (c) 10th October 2024
- (d) 19th October 2024

Case Scenario 2

GreenLeaf LLP is a limited liability partnership engaged in the business of eco-friendly product manufacturing. The LLP was initially established with three partners: Priya, Sameer, and EcoCorp Ltd., a corporate entity. Priya and Sameer are the designated partners, with Priya being a resident in India. EcoCorp Ltd. has appointed Anil, an individual, as its nominee to act on its behalf.

After a few years, Sameer decides to retire, leaving Priya and EcoCorp Ltd. as the remaining partners. Due to some administrative oversight, GreenLeaf LLP continues its operations without appointing a new partner. This situation persists

for seven months, with Priya being aware of the reduced number of partners. During this period, GreenLeaf LLP enters into several contracts and incurs significant financial obligations.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008, and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8) given herein under:

6. Given that Sameer retired and GreenLeaf LLP continued with only Priya and EcoCorp Ltd., what should GreenLeaf LLP have done within six months to comply with the LLP Act?
 - (a) Dissolved the LLP
 - (b) Continue operating with one designated partner
 - (c) Appoint at least one body corporate which should be a foreign company
 - (d) Appointed at least one more partner who should also be a designated partner, as every LLP should have at least two designated partners
7. According to the Limited Liability Partnership Act, 2008, choose the correct statement in relation to who must be a resident in India among the designated partners?
 - (a) At least one individual designated partner shall be resident in India
 - (b) All designated partners shall only be resident in India
 - (c) It is mandatory for only corporate partners to be resident in India
 - (d) At least four designated partners shall be resident in India
8. In the given case scenario suppose EcoCorp Ltd. also leaves the LLP and the LLP continues business for more than six months with only one partner, who is personally liable for the obligations incurred during that period?
 - (a) Priya
 - (b) Both Priya and EcoCorp Ltd.
 - (c) EcoCorp Ltd.
 - (d) Priya, Sameer and EcoCorp Ltd.
9. Lavender International Entertainment Inc., headquartered and registered in New York City and a prominent name in lifestyle audio innovations, professional audio and lighting solutions, and digital transformation, is present in more than seventy countries including India. Due to certain mis-happenings, the company was unable to file its financial statements along with necessary documents for the year 2023 with the Registrar of Companies (in India) within the stipulated time as permitted by the Companies Act, 2013. It is observed that the ROC may, for any special reason and on an application made in writing by Lavender International Entertainment, extend the 'filing time' maximum up to a certain period. From the following options, choose the correct one in this respect:
 - (a) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can

be extended by ROC maximum by one month beyond the stipulated time period.

- (b) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by two months beyond the stipulated time period.
 - (c) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by three months beyond the stipulated time period.
 - (d) 'Filing time' in respect of filing of financial statements along with necessary documents by Lavender International Entertainment Inc. can be extended by ROC maximum by six months beyond the stipulated time period.
10. The Board of Directors Vishvas Ltd. decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. What is the maximum amount of underwriting commission that can be paid to the underwriters.
- (a) 2%
 - (b) 3%
 - (c) 5%
 - (d) No limit has prescribed under the Companies Act, 2013 in case underwriting commission is to be paid in case of issue of shares.

Case Scenario 3

Amit, an Indian resident during the Financial Year (FY) 2021-2022, decided to pursue higher studies in Biotechnology in Switzerland. On 15th July 2022, he left India to begin his two-year academic program. The determination of Amit's residential status under the Foreign Exchange Management Act (FEMA), 1999, for the Financial Years 2022-2023 and 2023-2024, is crucial to understand his obligations and entitlements concerning foreign exchange transactions.

In terms of financial requirements, Amit needs USD 25,000 annually to cover his tuition fees. Additionally, he requires USD 30,000 annually for incidental expenses and living costs while studying abroad. Thus, his total annual requirement amounts to USD 55,000, making it imperative to assess the provisions under the Foreign Exchange Management Act, 1999, that govern the remittance of foreign.

On the basis of above facts and by applying applicable provisions of the Foreign Exchange Management Act, 1999, therein, choose the correct answer (one out of four) of the following MCQs (11-13) given herein under:

11. What would be Amit's residential status for FY 2022-2023 under FEMA, 1999?
- (a) Resident in India
 - (b) Non-Resident Indian (NRI)

- (c) Person of Indian Origin (PIO)
 - (d) Overseas Citizen of India (OCI)
12. What would be Amit's residential status for FY 2023-2024 under FEMA, 1999?
- (a) Resident in India
 - (b) Non-Resident Indian (NRI)
 - (c) Person of Indian Origin (PIO)
 - (d) Overseas Citizen of India (OCI)
13. Suppose now Amit wants more money for his living cost abroad. What is the maximum amount that can still be remitted abroad per financial year under the Liberalized Remittance Scheme (LRS)?
- (a) USD 100,000
 - (b) USD 195,000
 - (c) USD 200,000
 - (d) USD 500,000
14. ABC Real Estate Ltd., a prominent real estate company, has recently acquired a piece of land in a suburban area. The land has a small lake that is expected to generate significant tourism revenue in the future. Additionally, the land has several old structures that are permanently fastened to the earth, such as a stone pavilion and a historical monument. ABC Real Estate Ltd. plans to develop the area by refurbishing the existing structures and enhancing the natural surroundings to attract tourists.
- Considering the above scenario, identify which of the following components are classified as "Immovable Property" under the General Clauses Act, 1897:
- (a) Only the land and the stone pavilion.
 - (b) Only the land and the benefits arising from the lake.
 - (c) The land, benefits arising from the lake, and the stone pavilion.
 - (d) The land, the benefits arising from the lake, the stone pavilion, and the historical monument.
15. The Ministry of Transport is planning to construct a new highway that will connect City A and City B. According to the initial plan, the highway is expected to cover a distance of 150 kilometers. During the survey, the engineers measure the distance between the two cities as the crow flies, without considering the natural terrain and existing road curves. This method is in line with the provisions of the General Clauses Act, 1897 regarding the measurement of distance for the purposes of any Central Act or Regulation.
- Considering the above scenario, which statement is correct about the measurement of distance as per the General Clauses Act, 1897?
- (a) The distance should be measured along the existing roadways and curves.

- (b) The distance should be measured considering the natural terrain and obstacles.
- (c) The distance should be measured in a straight line on a horizontal plane unless otherwise specified.
- (d) The distance should be measured as a combination of straight lines and natural curves.

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

Attempt any **Four** questions out of the remaining **Five** questions.

1. (a) ABC Limited is a registered public company having the following:

i	Directors and their Relatives	20
ii	Employees	15
iii	Ex-Employees (Shares were allotted during employment)	20
iv	Members holding shares jointly (10 shares x 2 joint-holders each)	20
v	Other Members	150

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

- i. Whether the company can be converted into a private company?
 - ii. Whether existing number of members need to be reduced for the proposed conversion into a private company? **(5 Marks)**
- (b) Sunday Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

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

Even though, during the financial year 2023-24, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2023-24 in its meeting held on 5th August, 2024, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2024. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that rate of declaration of dividend in immediately preceding three years were 15%,

20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

Advise whether the decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013. **(5 Marks)**

- (c) Analyse the below mentioned situation in the light of the provisions of the Foreign Exchange Management Act, 1999.
- (i) Mr. Vinod has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in Singapore.
 - (ii) Mr. Shyam requires US Dollar 5,000 for remittance towards hiring charges of transponders. **(4 Marks)**
2. (a) Explain the meaning of Crystallization of a Floating Charge. **(5 Marks)**
- (b) Define the term 'Book of account' as per the Companies Act, 2013. **(5 Marks)**
- (c) Define the following with reference to the provisions of the General Clauses Act, 1897:
- (i) Measurement of Distances
 - (ii) Duty to be taken pro rata in enactments **(4 Marks)**
3. (a) Explain the exceptions to the Doctrine of Indoor Management. **(5 Marks)**
- (b) Prateek Limited, an unlisted company, registered in the State of Arunachal Pradesh with 42 shareholders, wants to organize the Annual General Meeting of the company on 13th August 2024 which happens to be Raksha Bandhan, a day declared as a holiday by the Government of Arunachal Pradesh.
- Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain the Doctrine of *Contemporanea Expositio*. **(4 Marks)**
4. (a) Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:
- (i) Chintamani is a practicing Chartered Accountant, and his spouse, Chitralkha, holds securities of Nagmani Ltd. valued at a face value amount of ₹ 80,000 (with a market value of ₹ 50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.
 - (ii) Mani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar

Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company. **(5 Marks)**

(b) Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**

(c) When can the Preamble be used as an aid to interpretation of a statute? **(4 Marks)**

5. (a) Priya, Smita, Shilpa, and Shefali were partners in Sharma & Associates LLP. Shilpa resigned from the firm effective 7th May 2024. However, neither Sharma & Associates LLP nor Shilpa informed the Registrar of Companies about her resignation. Is Shilpa still liable for any losses incurred by the firm from transactions entered into after 7th May 2024? Analyze this situation with reference to the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**

(b) Vishal Ltd., an unlisted company, has been directed by the Central Government to prepare periodical financial results and undergo a limited review of these results. The Board of Directors is objecting, arguing that, as an unlisted entity, they are not required to prepare periodical financial results. Analyze this situation with reference to the relevant provisions of the Companies Act, 2013. **(5 Marks)**

(c) In 2022, the Central Government enacted the "Digital Communications Act" to regulate and manage digital communications across the country. The Act provides specific duties and responsibilities for the Director of Digital Communications, including the oversight of digital infrastructure, enforcement of regulations, and ensuring compliance with data protection standards.

In 2023, the Director of Digital Communications, Mr. Arjun Patel, was appointed to lead the implementation of this Act. However, in January 2024, Mr. Patel took a medical leave of absence for six months. During his absence, Ms. Priya Sharma, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director.

While Mr. Patel was on leave, a major data breach incident occurred involving a significant violation of the Digital Communications Act. Ms. Sharma took immediate action to investigate the breach, enforce penalties, and implement new compliance measures to prevent future incidents.

The actions taken by Ms. Sharma, while performing the duties of the Director, led to a legal challenge. The opposing party argued that only the Director, as specified in the Act, had the authority to enforce such penalties and measures, and that Ms. Sharma's actions were not valid.

Analyze the validity of Ms. Priya Sharma's actions in the context of the General Clauses Act, 1897, considering the provisions related to 'Official chiefs and subordinates'. **(4 Marks)**

6. (a) Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013. **(5 Marks)**

OR

- (a) Enumerate the provisions of the Companies Act, 2013 in respect to the following:
- (i) Time limit for filing of annual return when Annual General Meeting is held.
 - (ii) Time limit for filing of annual return when Annual General Meeting is not held. **(5 Marks)**
- (b) Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'. **(5 Marks)**
- (c) Explain the meaning of term 'currency' as per the provisions of the Foreign Exchange Management Act, 1999. **(2 Marks)**
- (d) Define the term 'Official Gazette' as per the provisions of the General Clauses Act, 1897. **(2 Marks)**

MODEL TEST PAPER 5

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

XYZ Ltd. was incorporated on April 1, 2023. The Board of Directors, within the required timeframe, appointed Mr. A as the first auditor of the company on April 20, 2023. Mr. A was tasked with auditing the company's financial statements for the financial year 2022-23, and he held office until the conclusion of the first Annual General Meeting (AGM), which was held on September 30, 2023.

During the AGM, the shareholders decided to appoint Mr. B, a partner in the audit firm MNO LLP, as the new auditor. MNO LLP is a limited liability partnership incorporated under the LLP Act, 2008. Mr. B and his firm were appointed to hold office from the conclusion of the 1st AGM until the conclusion of the 6th AGM in 2028.

Five years later, in 2028, the company is considering whether to reappoint Mr. B and MNO LLP for another term. The shareholders are discussing the provisions of the Companies Act, 2013, and the implications of reappointing the same auditor or audit firm for multiple terms.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under: -

1. Who was responsible for appointing the first auditor of XYZ Ltd., and within what timeframe should the appointment have been made?
 - (a) Shareholders, within 60 days of registration of company
 - (b) Board of Directors, within 30 days of registration of company
 - (c) Board of Directors, within 60 days of registration of company
 - (d) Shareholders, within 30 days of registration of company
2. How long can MNO LLP, as an audit firm, hold office as the auditor of XYZ Ltd. according to the Companies Act, 2013?
 - (a) One term of five consecutive years

- (b) Two terms of five consecutive years
 - (c) One term of six consecutive years
 - (d) Three terms of five consecutive years
3. If XYZ Ltd. wants to reappoint MNO LLP for another term after 2028, what does the Companies Act, 2013, mandate?
- (a) MNO LLP can be reappointed for another term of five years.
 - (b) MNO LLP cannot be reappointed, as they have already served one term.
 - (c) MNO LLP cannot be reappointed, as they have already served two terms.
 - (d) MNO LLP can be reappointed, but the tenure must be reduced to three years.
4. What is the maximum tenure for which Mr. A as the first auditor of XYZ Pvt. Ltd., can hold office?
- (a) From the date of appointment until the conclusion of the first AGM i.e. 30th September 2023
 - (b) From the date of appointment until the conclusion of the second AGM (in 2024)
 - (c) From the date of appointment until the conclusion of the third AGM (in 2025)
 - (d) From the date of registration of company until the conclusion of the first AGM i.e. 30th September 2023
5. By what date the copy of the annual return is to be filed with the Registrar of companies in case of first AGM of XYZ Ltd.?
- (a) 29th November 2023
 - (b) 30th December 2023
 - (c) 31st January 2024
 - (d) 29th February 2024

Case Scenario 2

In 2023, Tech Innovations LLP was established as a Limited Liability Partnership under the Limited Liability Partnership Act, 2008. The LLP was formed with two partners: Alex and Jordan, who contributed equally to the capital. Alex contributed 5,00,000, while Jordan also contributed 5,00,000. The firm was registered with the Registrar of Companies on April 1, 2023.

Tech Innovations LLP's operations focused on software development and technology consulting. As per the LLP agreement, both partners shared profits and losses equally. The LLP agreement also stipulated that any changes in the partnership, such as the addition of a new partner or transfer of interest, required the consent of both existing partners.

In June 2024, Tech Innovations LLP decided to admit a new partner, Priya, who brought in ₹ 2,00,000 as her capital contribution. This change was duly recorded and filed with the Registrar of Companies. Furthermore, the LLP decided to hold an annual general meeting within six months from the end of the financial year to approve financial statements and discuss business matters.

On the basis of above facts and by applying applicable provisions of the Limited liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-7 of **2 marks each**) given herein under:

6. As per the LLP Act, 2008, what is required for admitting a new partner into the LLP?
 - (a) The consent of one existing partner- Only Alex
 - (b) A majority vote of existing partners- Either Alex or Jordan
 - (c) The consent of all existing partners- Both Alex and Jordan
 - (d) Approval from the Registrar of Companies
7. When is Tech Innovations LLP required to hold its annual general meeting?
 - (a) By 30th April, 2024
 - (b) By 30th June, 2024
 - (c) By 31st July, 2024
 - (d) By 30th September, 2024

Case Scenario 3

In 2024, Global Enterprises Ltd., a company specializing in international trade, needed to send an important notice to one of its clients, Mr. Rajiv Patel, regarding a contractual amendment. According to the company's internal regulations and the contract terms, the notice had to be served by post.

On April 15, 2024, the company's legal department prepared the notice and addressed it to Mr. Patel at his registered address. The notice was properly addressed, prepaid, and sent via registered post with acknowledgment due to ensure the highest level of confirmation for delivery.

A few days later, on April 20, 2024, the notice was returned with a stamp indicating that it was "not claimed" by Mr. Patel. The legal department recorded the return of the notice and noted the endorsement.

The company's legal advisor referred to past case laws for similar scenarios to ensure that the notice was considered legally served under Section 27 of the General Clauses Act, 1897. They reviewed the following precedents:

United Commercial Bank v. Bhim Sain Makhija: It was noted that merely sending a notice by registered post without the acknowledgment due did not provide sufficient legal protection for proving service.

Jagdish Singh v. Natthu Singh: This case demonstrated that if a notice sent by registered post was returned with a refusal endorsement, it was considered served.

Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh: It was established that if a notice sent by registered post to a proper address was returned with an endorsement like "not claimed", it was deemed served unless proven otherwise.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 8-10 of **2 marks each**) given herein under:

8. According to Section 27 of the General Clauses Act, 1897, what three conditions must be fulfilled for a service by post to be deemed effective?
 - (a) Properly addressed, Pre-paid, and Posting by ordinary post
 - (b) Properly addressed, Pre-paid, and Posting by registered post
 - (c) Properly addressed, Pre-paid, and Sending by courier
 - (d) Properly addressed, Pre-paid, and Hand delivery
9. In the case of United Commercial Bank v. Bhim Sain Makhija, why was the presumption of service under registered post found to be insufficient?
 - (a) Because the notice was sent by ordinary post
 - (b) Because the notice was sent by registered post but not with acknowledgment due
 - (c) Because the address was incorrect
 - (d) Because the recipient did not respond
10. What does the case of Jagdish Singh v. Natthu Singh demonstrate about the service of notice?
 - (a) Notice sent by registered post without return endorsement is invalid
 - (b) Notice sent by registered post and returned with refusal endorsement is deemed served
 - (c) Notice sent by ordinary post is deemed served if not returned
 - (d) Notice served by hand delivery is always valid

Independent case scenarios

11. XYZ Ltd., a manufacturing company, had taken a loan from ABC Bank and registered a charge on its assets on January 1, 2022. On April 1, 2024, XYZ Ltd. paid off the entire loan to ABC Bank. According to Section 82 of the Companies Act, 2013, XYZ Ltd. was required to file an intimation with the Registrar of Companies (ROC) regarding the satisfaction of the charge within 30 days from the date of the payment.

However, due to an oversight, the company did not submit the intimation until July 15, 2024. To rectify this, the company decided to take advantage of the extended period for intimation provided under the proviso to Section 82 (1),

which allows for an extension up to 300 days with the payment of additional fees.

The additional fee for late intimation was `5,000, and the company's compliance officer needed to calculate the total fee to be paid for the delayed filing.

As per the given facts, examine by how many days XYZ Ltd. was late in submitting the intimation of satisfaction of charge? What additional fee should the company pay for this delay?

- (a) 90 days , Fee = 1,000
- (b) 76 days , Fee = 5,000
- (c) 90 days , Fee = 5,000
- (d) 300 days , Fee = 10,000

(2 Marks)

12. Athlete Rajiv Sharma, a professional tennis player from India, achieved remarkable success by winning a prestigious international tennis tournament held in Paris, France. As a result of his victory, he received a prize money of \$150,000 from the event organizers. Rajiv was excited about his winnings and planned to use a portion of the prize money to fund his training and future tournaments abroad.

Rajiv decided to remit \$150,000 to his personal account in France to manage his finances and cover his training expenses. However, before proceeding, he needed to ensure that the remittance complied with the Foreign Exchange Management Act (FEMA), 1999, specifically concerning the remittance of prize money or sponsorship of sports activities abroad.

Under FEMA regulations, individuals other than international, national, or state-level sports bodies are subject to specific guidelines when remitting amounts exceeding \$100,000. Rajiv was aware that the amount involved in his case exceeded this threshold and sought advice on the necessary steps and compliance.

Enumerate in the given instance, according to FEMA regulations, what must Rajiv Sharma do if he wishes to remit prize money exceeding US \$100,000 abroad?

- (a) Remit the amount directly without any additional requirements.
- (b) Obtain approval from Paris Government before remitting the amount
- (c) Only provide proof of winning the prize
- (d) Require prior approval of Ministry of Human Resource Development (Department of Youth Affairs and Sports)

(2 Marks)

13. Kite Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by Kite Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD

40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by Kite Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:

- (a) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
- (b) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Reserve Bank of India.
- (c) For remittance of the prize money of USD 51,000, Kite Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
- (d) For remittance of the prize money of USD 51,000, Kite Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs). **(2 Marks)**

14. A Ltd. is incorporated on 3rd January, 2023. As per the Companies Act, 2013, what will be the financial year for the company:

- (a) 31st March, 2023
- (b) 31st December, 2023
- (c) 31st March, 2024
- (d) 30th September, 2024 **(2 Marks)**

15. A charge was created by Cyprus Limited on its office premises to secure a term loan of ` 1 crore availed from ABM Bank Limited through an instrument of charge executed by both the parties on 16th February, 2023. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is:

- (a) 27th April, 2023
- (b) 17th April, 2023
- (c) 2nd May, 2023
- (d) 16th June 2023 **(2 Marks)**

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and `50 crore to the trust. He appoints New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way? **(5 Marks)**
- (b) The Government of India is holding 51% of the paid-up equity share capital of Surya Ltd. The Audited financial statements of Surya Ltd. for the financial year 2023-24 were placed at its annual general meeting held on 1st August, 2024. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 29th September, 2024 whereat the accounts were adopted. Thereafter, Surya Ltd. filed its financial statements relevant to the financial year 2023-24 with the Registrar of Companies on 20th October, 2024. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Surya Ltd. has complied with the statutory requirement regarding filing of accounts (unadopted and adopted) with the Registrar? **(5 Marks)**
- (c) Mr. A, an Indian National desires to obtain Foreign Exchange for the following purposes:
 - (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
 - (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.Advise him whether he can get Foreign Exchange and if so, under what conditions? **(4 Marks)**
2. (a) What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013. **(5 Marks)**
- (b) What is the mode of service of documents to Registrar or members, as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. **(4 Marks)**
3. (a) Navni Ltd. has accumulated a significant amount in its securities premium account. The company is considering different ways to utilize these funds. Advise the directors of the company on the application of the securities premium account as per the provisions of the Companies Act, 2013. **(5 Marks)**

- (b) KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2024 at 11:00 A.M. The company has 900 members. On 11th March, 2024 following persons were present by 11:30 A.M.
- (1) P1, P2 & P3 shareholders
 - (2) P4 representing ABC Ltd.
 - (3) P5 representing DEF Ltd.
 - (4) P6 & P7 as proxies of the shareholders
- (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
 - (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
 - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
 - (iv) What happens if there is no Quorum in the Adjourned meeting?
- (5 Marks)**
- (c) Write short note on:
- (i) Provisio
 - (ii) Explanation,
- with reference to interpretation of Statutes, Deeds and Documents.
- (4 Marks)**
4. (a) 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. How will you approach to this proposal, as a Statutory Auditor of Avni Ltd., taking into account the consequences, if any, of accepting this proposal? **(5 Marks)**
- (b) Define the term 'Body Corporate' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (c) Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? **(4 Marks)**
5. (a) M/s Sulbha LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Sulbha which is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Sulbha LLP is liable to change its name under the provisions of Limited Liability Act, 2008? **(5 Marks)**
- (b) CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory

auditors of Liberal Ltd. (a listed company) for past ten years as on 31st March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31st March, 2027) for SM & Company? **(5 Marks)**

- (c) A Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2024. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice, the dates during which A Ltd. is required to pay the dividend? **(4 Marks)**
6. (a) The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting. **(5 Marks)**

OR

- (a) Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? **(5 Marks)**
- (b) Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India.
- As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India. **(5 Marks)**
- (c) Explain the meaning of term 'Foreign Exchange' as per the provisions of the Foreign Exchange Management Act, 1999. **(4 Marks)**

MODEL TEST PAPER 6

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

Prakash Limited and Vasudha Private Limited (VPL) were incorporated in January 1999 by Mr. Vicky Tripathi and his family members. Both the companies are engaged in the business of manufacturing machineries used in agricultural sector. Mr. Vicky Tripathi and his younger brother Vinay Tripathi actively participate in the daily operations of both the companies. Vasudha Private Limited is wholly owned by Tripathi family, while Tripathi family has a majority stake of 51% in Prakash Limited.

Due to the poor economic conditions in the agriculture sector and shifting of the farmers' focus to more advanced farming techniques, the sales of Prakash Limited is dipping and its bottom line has been in the red for the last couple of years. The unabsorbed loss of Prakash Limited for the current financial year is ₹ 9.8 crore. Prakash Limited didn't pay any dividends during the last four years. Prakash Limited has accumulated profit in the form of free reserves of ₹ 180 crore whereas paid-up share capital is ₹ 918 crore as per its latest audited financial statement and loss of ₹ 9.8 crore has not been deducted from such amount of free reserves. Since pressure from shareholders of the free float is mounting, management at Prakash Limited decided to pay dividend this year out of accumulated profit. Finally, the dividend was declared on 31st August 2024. Some of the dividend remained unpaid as on 30th September 2024, on account of operation of law; this was transferred to unpaid Dividend Account and a statement containing only the names of such beneficiaries was hosted on the website of the company on 9th November 2024.

Vasudha Private Limited is a mid-sized unlisted entity, with few branches abroad and is not required to appoint an independent director under section 149(4). During the immediately preceding F.Y., its net worth was ₹ 280 crore, turnover was ₹ 590

crore and net profit was ₹ 45.8 crore. The profits and other information for the immediately preceding three years are given below:

Particulars	Year ended 31.3.2024 (₹ in crore)	Year ended 31.3.2023 (₹ in crore)	Year ended 31.3.2022 (₹ in crore)
Net Profit for the year as per section 198 (in accordance with applicable provisions)	41.6	42.9	28

The Board of Directors of Vasudha Private Limited is not clear whether they have to compulsorily form a CSR committee. In order to avoid adverse legal consequences, Vasudha Private Limited constituted a CSR committee comprising of two (2) non-executive directors and one (1) executive director who was appointed as chairperson of the committee.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under:

- In case of Prakash Limited, regarding the unpaid dividend, which of the following statements is correct?
 - Prakash Limited is guilty, of non-payment of dividend, because some of the dividends remain unpaid even after 30 days of declaration.
 - Prakash Limited is guilty, because the list of beneficiaries of unpaid dividend is hosted on the website after 30 days from the date it falls in the category of unpaid dividend.
 - Prakash Limited is guilty, because the list of beneficiaries does not contain the latest known address of beneficiaries and the amount unpaid.
 - Prakash Limited is not guilty, because it has full-filled all the provisions of law pertaining to unpaid dividend.
- During the current year, is Vasudha Private Limited required to constitute CSR committee under the provisions of the Companies Act, 2013?
 - No, because it is a private company
 - No, because it is an unlisted company and it has net-worth less than ₹ 500 crore
 - Yes, because despite being unlisted company its turnover is above ₹ 500 crore
 - Yes, because the company meets the threshold criteria having net profits exceeding ₹5 crore in the immediately preceding financial year

3. What is the implication of the fact that Prakash Limited has not paid dividends for the last four years while having free reserves?
 - (a) The company is in violation of the Companies Act, 2013, for not declaring dividends.
 - (b) The shareholders can legally challenge the management for not utilizing free reserves for dividends.
 - (c) There is no legal obligation to declare dividends even if the company has free reserves.
 - (d) The company must now use all of its free reserves to pay dividends to satisfy shareholder demands.
4. Considering the legal provisions regarding the constitution of CSR committee and the one constituted by Vasudha Private Limited, state which of following the statements hold truth?
 - (a) Constitution of the committee is invalid because it doesn't consist of an independent director.
 - (b) Constitution of the committee is invalid because its chairperson is an executive director.
 - (c) Constitution of the committee is valid because it depends purely upon the discretion of management.
 - (d) Constitution of the committee is valid because company is not required to appoint an independent director.
5. What is the minimum amount to be spent by Vasudha Private Limited on CSR activities for F.Y. 2024-25?
 - (a) ₹ 89.06 Lakh
 - (b) ₹ 78.20 Lakh
 - (c) ₹ 75.00 Lakh
 - (d) ₹ 73.80 Lakh

Case Scenario 2

Rahul and Meenakshi, two young entrepreneurs, founded “Educom Innovators LLP” under the Limited Liability Partnership Act, 2008, with a focus on providing digital education solutions. Rahul brought technical expertise, while Meenakshi managed the business operations. According to the LLP Agreement, both contributed equally and shared profits equally. After two years of growth, they decided to admit Anshul, an industry expert, as a partner to expand their reach. Anshul agreed to contribute additional capital and bring industry contacts. However, shortly after joining, Anshul discovered that certain key compliance filings, including Form 11 (Annual Return) and Form 8 (Statement of Accounts and Solvency), were pending. Concerned, Anshul wanted to understand his liability and insisted that the LLP immediately address the compliance issues. Meanwhile, Rahul proposed to amend the LLP Agreement to reflect Anshul's new profit-sharing ratio and allocate specific decision-making powers to him. As they worked through these matters, they consulted a legal advisor to

understand how the Limited Liability Partnership Act, 2008, impacted their responsibilities, liabilities, and compliance obligations.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8, of **2 marks each**) given herein under:

6. When Anshul joined Educom Innovators LLP, he discovered that key compliance filings, including the Annual Return and Statement of Accounts and Solvency, were pending. What is Anshul's liability as a newly admitted partner concerning these past compliance lapses?
 - (a) Anshul has no liability for past compliance lapses since he was not a partner when they occurred.
 - (b) Anshul shares equal liability for past compliance lapses because he is now a partner in the LLP.
 - (c) Anshul is only liable if the LLP Agreement specifically assigns responsibility to him for compliance.
 - (d) Anshul's liability for past compliance is limited to his capital contribution in the LLP.
7. In light of Anshul's concern about the pending compliance filings, which of the following best describes the responsibilities of the partners in Educom Innovators LLP regarding compliance with the LLP Act, 2008?
 - (a) Only the designated partners are responsible for ensuring compliance with filing obligations under the LLP Act.
 - (b) All partners, including new partners like Anshul, are equally responsible for compliance, regardless of the LLP Agreement.
 - (c) Compliance responsibilities can only be assigned to one partner, who will bear full accountability.
 - (d) The legal advisor is responsible for handling compliance, and the partners have no liability once they hire legal counsel.
8. Suppose in the given scenario, Educom Innovators LLP fails to file the Statement of Account and Solvency or Annual Return for any five consecutive financial years, which of the following could occur?
 - (a) Educom Innovators LLP may be wound up the Tribunal
 - (b) Takeover of Educom Innovators LLP by the persons appointed by the Registrar of Companies
 - (c) Revocation of all partner rights until filings are complete
 - (d) The losses for these 5 consecutive years shall be shared equally by all the partners irrespective of the profit sharing ratio as decided in the LLP agreement.

Case Scenario 3

In 2024, New Limited, a company specializing in international trade, needed to send an important notice to one of its clients, Mr. A, regarding a contractual amendment. According to the company's internal regulations and the contract terms, the notice had to be served by post.

On April 15, 2024, the company's legal department prepared the notice and addressed it to Mr. A at his registered address. The notice was properly addressed, prepaid, and sent via registered post with acknowledgment due to ensure the highest level of confirmation for delivery.

A few days later, on April 20, 2024, the notice was returned with a stamp indicating that it was "not claimed" by Mr. A. The legal department recorded the return of the notice and noted the endorsement.

The company's legal advisor referred to past case laws for similar scenarios to ensure that the notice was considered legally served under section 27 of the General Clauses Act, 1897. They reviewed the following precedents:

United Commercial Bank v. Bhim Sain Makhija: It was noted that merely sending a notice by registered post without the acknowledgment due did not provide sufficient legal protection for proving service.

Jagdish Singh v. Natthu Singh: This case demonstrated that if a notice sent by registered post was returned with a refusal endorsement, it was considered served.

Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh: It was established that if a notice sent by registered post to a proper address was returned with an endorsement like "not claimed", it was deemed served unless proven otherwise.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 9-11 of **2 marks each**) given herein under:

9. According to section 27 of the General Clauses Act, 1897, what three conditions must be fulfilled for a service by post to be deemed effective?
 - (a) Properly addressed, Pre-paid, and Posting by ordinary post
 - (b) Properly addressed, Pre-paid, and Posting by registered post
 - (c) Properly addressed, Pre-paid, and Sending by courier
 - (d) Properly addressed, Pre-paid, and Hand delivery
10. In the case of *United Commercial Bank v. Bhim Sain Makhija*, why was the presumption of service under registered post found to be insufficient?
 - (a) Because the notice was sent by ordinary post
 - (b) Because the notice was sent by registered post but not with acknowledgment due
 - (c) Because the address was incorrect
 - (d) Because the recipient did not respond

11. What does the case of *Jagdish Singh v. Natthu Singh* demonstrate about the service of notice?
- (a) Notice sent by registered post without return endorsement is invalid
 - (b) Notice sent by registered post and returned with refusal endorsement is deemed served
 - (c) Notice sent by ordinary post is deemed served if not returned
 - (d) Notice served by hand delivery is always valid

Independent case scenarios

12. ABC Private Limited is a project engineering, procurement and construction company. The company has bagged a contract from the Government of State of Kerala for construction of Water Dam. The company has involved a project consultancy firm situated in Australia for preparing techno-economic feasibility report to enable it to start construction work of dam. The company had paid USD 7,000,000 to vendor of Australia.

The company also availed the services of Software Company situated in Denmark for the migration of its accounting software from SAP to Oracle for which the company had paid USD 2,000,000 to the software company.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned statement is correct:

- (a) The company can make payment of USD 7,000,000 and USD 2,000,000 without any approval.
 - (b) The company can make payment of USD 7,000,000 without any approval and USD 2,000,000 after obtaining prior approval of the Reserve Bank of India (RBI).
 - (c) The company can make payment of USD 7,000,000 and USD 2,000,000 after obtaining prior approval of RBI.
 - (d) The company can make payment of USD 7,000,000 after obtaining prior approval of RBI and USD 2,000,000 without any approval. **(2 Marks)**
13. Mr. Narain Srinivas had enrolled himself for management course of three years with IOL, Mumbai. Out of three years, two years of educational course would be provided at the campus of IOL, Mumbai and one year of educational course would be provided at University of Auckland under student exchange program. Mr. Narain Srinivas is required to pay tuition fee of ₹10 lakh directly to IOL, Mumbai for two years course and USD 200,000 to University of Auckland.
- Mr. Narain had left India on 20th August 2022 to complete his degree from University of Auckland. In the last month of final year of the course, he got an offer from one of the reputed company situated in Auckland and had accepted the offer and he decided to work there. On 1st September 2023, Mr. Narain had visited India for 30 days to meet his family and on 1st October 2023 had left India to carry on his employment.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned options correctly determined the residential status of Mr. Narain Srinivas:

- (a) Mr. Narain Srinivas to be treated as resident in India for Financial Year (FY) 2023-2024 and FY 2024-2025.
- (b) Mr. Narain Srinivas to be treated as resident in India for FY 2022-2023 and FY 2023-2024.
- (c) Mr. Narain Srinivas to be treated as non-resident for FY 2023-2024 and FY 2024-2025 as he left India for higher studies.
- (d) Mr. Narain Srinivas to be treated as resident in India for FY 2023-2024 since he stays in India for more than 182 days and non-resident for FY 2024-2025. **(2 Marks)**

14. Green Tree Limited is planning to issue debentures to the public and, as per the legal requirements, must appoint a debenture trustee before making an offer. The company is considering several individuals for this role:

- 1. Mr. Sharma, who owns a small number of shares in Green Tree Limited as an investor.
- 2. Ms. Kapoor, who previously lent ₹ 5,000 to Green Tree Limited and is currently a lender.
- 3. Mr. Verma, who has provided a personal guarantee to ensure the repayment of the debentures issued by Green Tree Limited.

Based on the provisions of the Companies Act, 2013 and relevant rules, who among the following is eligible to be appointed as a Debenture Trustee for Green Tree Limited?

- (a) Only Mr. Sharma.
- (b) Only Ms. Kapoor
- (c) Only Mr. Verma
- (d) None of Mr. Sharma, Ms. Kapoor or Mr. Verma are eligible to be appointed as Debenture trustee of Green Tree Limited. **(2 Marks)**

15. Best Limited initially created a charge in favor of LKJ Bank for a financial facility. This charge was duly registered. A few months later, LKJ Bank enhanced the credit facility by an additional ₹ 40 crore. However, due to an oversight, Best Limited failed to register the modification to the original charge with the Registrar of Companies. The company has now realized this error and is concerned about the potential impact on its records and compliance.

As per the provisions of the Companies Act, 2013, what steps should Best Limited take to correct the situation regarding the unregistered modification of the charge?

- (a) Ignore the oversight since the original charge was registered.
- (b) Re-register only the original charge with the updated facility amount.

- (c) File an application with the Central Government for rectification of the Register of Charges.
- (d) Contact LKJ Bank to withdraw the enhanced facility until the registration is completed. **(2 Marks)**

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) Alpha Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of ₹ 200 crore. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 5 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old? **(5 Marks)**
- (b) Examine the following situations in the light of the Companies Act, 2013:
 - (i) Mr. Prem, a Chartered Accountant, has been appointed as an auditor of A Limited in the Annual General Meeting of the company held in September 2023, in which he accepted the assignment. Subsequently, in January 2024 he joined as a partner in the consultancy firm where Mr. Ajay is also a partner. Mr. Ajay is also working as a Finance Executive of A Limited.
 - (ii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹ 1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role? **(5 Marks)**
- (c) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
 - (i) A requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.
 - (ii) B requires U.S. \$ 2,000 for payment related to call back services of telephones. **(4 Marks)**
2. (a) Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Romit paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)? **(5 Marks)**

- (b) MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'.
- The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain the following with reference to the provisions of the General Clauses Act, 1897:
- Movable Property
 - Oath **(4 Marks)**
3. (a) Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)? **(5 Marks)**
- (b) Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Does an explanation added to a section widen the ambit of a section? **(4 Marks)**
4. (a) Anoj Limited declared a final dividend to its shareholders at the Annual General Meeting on 1st August, 2024. As per the decision, the dividend payment was to be made within the stipulated 30-day period. However, due to internal financial constraints, the company failed to pay the declared dividend and did not dispatch the dividend warrants to the shareholders within the required timeframe. The default continued until 15th October, 2024, leading to shareholder complaints.
- In light of this scenario, what specific punishments and liabilities could the company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (b) Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (c) What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes. **(4 Marks)**

5. (a) Kishore, Kanshik, Yuvan and Bhora were partners in ABC & Associates LLP. Yuvan resigned from the firm effective from 11th November, 2024 but this was not informed to the Registrar of Companies by the Limited Liability Partnership or Yuvan. Whether Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024? Give your answer as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (b) The auditor of ABC Limited (not a government company) has resigned on 31st December, 2023, while the Financial year of the company ends on 31st March, 2024. Explain how such an auditor shall be appointed, as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897. **(4 Marks)**
6. (a) Examine the validity of the following decision of the Board of Directors with reference to the provisions of the Companies Act, 2013:
- In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll. **(5 Marks)**

OR

- (a) ABC Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Raj, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? **(5 Marks)**
- (b) Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'. **(5 Marks)**
- (c) Explain the meaning of term 'Current Account transactions' as defined under the Foreign Exchange Management Act, 1999. **(4 Marks)**

MODEL TEST PAPER 7
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

Mr. V started a new venture of on-line business of supply of grocery items at the door- step of consumers. Initially it was having the area of operations of Saharanpur city only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sundaram who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Mr. V agreed and a OPC was incorporated in the name of “Ask V Online Grocery (OPC) Pvt Ltd.” (for short OPC-1). In this OPC Mr. V became the member and director and Sudha (the mother of Mr. V) was made as nominee.

After a year Mr. V got married with Vani. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of “Vani Milk Products (OPC) Pvt Ltd” (for short OPC-2) was incorporated with the help of his professional friend Sundaram. In this OPC-2, Vani (his wife) became the member and director and Mr. V was named as Nominee.

To summarise the position, the information is tabulated as under:

Name of OPC	Ask Mr. V4Online Grocery (OPC) Pvt Ltd [OPC-1]	Vani Milk Products (OPC) Pvt Ltd [OPC-2]
Member and Director	Mr. V	Vani
Nominee	Sudha (Mother of Mr. V)	Mr. V (Husband of Vani)

After some time, Sudha (the mother of Mr. V) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Krishh be made nominee in the OPC-1. When Krishh came to know this fact, he argued with Mr. V to fulfil the wish of Sudha as per her WILL (Mother of Mr. V and Krishh), but Mr. V denied this and appointed Vani (his wife) as nominee.

Aggrieved from the decision of Mr. V for not nominating him (Krishh), Krishh threatened Mr. V to take appropriate legal action against him for not honouring the WILL of Sudha and consulted his lawyer. Meanwhile due to continuous threatening and unpleasant conversation between Krishh and Mr. V, Vani became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Mr. V being the nominee in OPC-2 became member and director of this OPC-2.

One of the friends of Mr. V advised him to do some charitable work of providing free education to the girl children of his native village near by Saharanpur. Mr. V thought about this proposal and asked his professional friend Sundaram to convert this OPC-2 into Section 8 company.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under:

1. Since Vani, being insane, lost the capacity to contract, Mr. V (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:
 - (a) Mr. V in the capacity of husband of Vani can nominate any person as Nominee of OPC-2
 - (b) Mr. V (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
 - (c) When no person is nominated, the Central Govt. will make nomination of such OPC-2.
 - (d) When no person is nominated the Registrar shall order the company to be wound up.
2. Whether conversion of OPC-2 into a company governed by Section 8 is permissible?
 - (a) Yes, OPC can be converted into Section 8 company
 - (b) No, OPC cannot be converted into Section 8 company
 - (c) This OPC-2 can be converted into section 8 company, provided the Central Govt give license
 - (d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company

3. Mr. V is a member in OPC-1 and became a member in another OPC-2 (on 2nd April, 2024) by virtue of his being a nominee in that OPC-2. Mr. V shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:
 - (a) 17th May 2024
 - (b) 25th August 2024
 - (c) 26th August 2024
 - (d) 29th September 2024
4. After the demise of Sudha (the mother of Mr. V), Vani was nominated by Mr. V for OPC-1 as Nominee. But now Vani has become insane, so what recourse you will suggest to Mr. V:
 - (a) Mr. V is required to nominate another person as nominee
 - (b) Mr. V should wait till Vani becomes good of her health and able to have the capacity to contract
 - (c) Although Vani has become insane, but if she is able to sign, her nomination in OPC-1 may continue
 - (d) Sundaram (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Vani
5. Mr. V is preparing the financial statements for "Ask V Online Grocery (OPC) Pvt Ltd" for the financial year. Which of the following statements is correct regarding compliance with section 129 of the Companies Act, 2013?
 - (a) Financial statements of OPC-1 must include a cash flow statement.
 - (b) The financial statements must be presented and approved by a general meeting of members.
 - (c) Mr. V, as the sole director, is responsible for approving the financial statements before filing with the RoC.
 - (d) Consolidated financial statements must be prepared for OPC-1.

Case Scenario 2

DEF LLP is a well-established limited liability partnership engaged in providing consulting services. It has four partners: A, B, C, and D, each contributing equally to the capital and holding an equal share of the profits and losses, as detailed in the LLP agreement. The partnership operates smoothly until Partner A encounters significant financial difficulties due to personal business losses and decides to transfer his entire share of profits and losses in the LLP to Mr. X, an external investor, in exchange for financial assistance. The decision, although legal as per the LLP agreement, creates a ripple of concerns among the other partners.

After the transfer:

- Partner B argues that the LLP must be dissolved because Partner A's transfer of rights effectively amounts to exiting the partnership, thus impacting the continuity of the LLP.

- Mr. X, being the transferee, demands active participation in DEF LLP's decision-making processes and insists on accessing financial records to monitor his investment, citing the substantial stake he now holds in the LLP.
- Partner C voices concerns about the potential disruption in the LLP's management structure and operations, questioning whether Mr. X's involvement aligns with the LLP's existing framework and the provisions of the Limited Liability Partnership Act, 2008.
- Partner D, on the other hand, adopts a neutral stance but raises the issue of whether the LLP agreement sufficiently addresses such transfers to avoid future disputes.

The situation creates a complex dynamic within DEF LLP, raising questions about the rights of the transferee, the implications for the partnership's operations, and the legal provisions governing such transfers under the Limited Liability Partnership (LLP) Act, 2008.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8, of 2 marks each) given herein under:

6. Can Partner A legally transfer their share of profits and losses to Mr. X?
 - (a) No, Partner A cannot transfer their share without the consent of all other partners.
 - (b) Yes, Partner A can transfer their share entirely in accordance with the LLP agreement.
 - (c) No, such transfers are not allowed under the LLP Act.
 - (d) Yes, but only if Mr. X becomes a partner in the LLP.
7. Does the transfer of Partner A's share to Mr. X result in the dissolution of DEF LLP?
 - (a) Yes, because transferring all rights indicates Partner A's disassociation.
 - (b) No, because the LLP Act, 2008 does not consider such transfers as grounds for dissolution.
 - (c) Yes, because all partners must agree to such transfers to avoid dissolution.
 - (d) No, unless it is explicitly stated in the LLP agreement.
8. Does Mr. X gain any right to participate in DEF LLP's management or access its financial records?
 - (a) Yes, as he now holds Partner A's share in the LLP.
 - (b) No, unless expressly allowed by the LLP agreement.
 - (c) Yes, because it is essential to safeguard his investment.
 - (d) Yes, as external transferees are automatically included in LLP management.

Case Scenario 3

Sunrise Technologies Private Limited ("STPL") was in process of establishing its new software development center in Pune. On 28th February, 2024, the Board of Directors passed a resolution to purchase a property consisting of:

- A three-storey building
- 25 acres of agricultural land adjacent to the building
- 100 motor cars
- An orchard with 100 fruit-bearing trees

The company received a government notification dated 15th March, 2024, requiring all new technology centers to obtain special clearance within 45 days of establishment. The notification mentioned that existing orders under the previous Technology Parks Act (which was repealed and replaced by new legislation) would continue to remain valid. The notification was to be served to all concerned parties through registered post.

The Managing Director has approached you to understand various legal aspects under the General Clauses Act, 1897.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 9-11, of 2 marks each) given herein under:

9. With respect to the property being purchased by STPL, which of the following would not qualify as "immovable property" under the General Clauses Act, 1897?
 - (a) The orchard with fruit-bearing trees
 - (b) Motor Cars
 - (c) The three-storey building
 - (d) The agricultural land
10. The government notification requires clearance "within 45 days". If the notification was received on 20th March, 2024, and the 45th day falls on Sunday, May 4, 2024, what would be the last date for obtaining clearance?
 - (a) 3rd May, 2024
 - (b) 4th May, 2024
 - (c) 5th May, 2024
 - (d) 6th May, 2024
11. Concerning the previous orders under the repealed Technology Parks Act, which statement is correct?
 - (a) All previous orders automatically become void
 - (b) Previous orders continue to be valid unless explicitly cancelled
 - (c) Previous orders require fresh validation under new law

- (d) Previous orders are valid for only 6 months after repeal

Independent case scenarios

12. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2024. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.

- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
- (b) No, the signing is not in order as only the Chairman is authorised to sign the report
- (c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
- (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company. **(2 Marks)**

13. Sneha, a resident of India, wants to invest her savings. She considers buying shares of a US-based company to benefit from the growing tech market. She is unsure if such an investment is allowed under the Foreign Exchange Management Act, 1999.

Advise whether Sneha can invest in shares of the US-based company?

- (a) Yes, such investments are allowed.
- (b) No, such investments are not allowed.
- (c) Yes, but only if the investment is for US\$ 5000.
- (d) No, unless she is a non-resident Indian (NRI). **(2 Marks)**

14. Rahul, a resident of India and an avid horse-racing enthusiast, earns ₹ 5 lakh as prize money from an international horse-racing event held in Dubai. He wants to remit this amount to his personal foreign bank account for future international race entries and training. He consults his banker to confirm if this transaction is permissible under the Foreign Exchange Management Act (FEMA), 1999.

Can Rahul remit his income from the international horse-racing event to his foreign bank account under FEMA, 1999?

- (a) Yes, as it is his earned income.
- (b) No, as remittance of income from racing, riding, or any other hobby is prohibited.
- (c) Yes, but only with prior approval from the Reserve Bank of India (RBI).
- (d) No, unless it is for charitable purposes. **(2 Marks)**

15. Mr. Mudit works as an employee at ABC Private Limited with an annual salary of ₹3,00,000, as specified in his employment contract. Mr. Mudit paid to the company ₹ 3,50,000 in the nature of non-interest bearing security deposit. Giving regard to the provisions of the Companies Act, 2013, choose the correct option out of the following:
- (a) The deposit is a valid transaction since it is a non-interest-bearing security deposit provided under the terms of his employment.
 - (b) The deposit violates the Companies Act, 2013, because companies cannot accept deposits from their employees.
 - (c) The deposit violates the Companies Act, 2013, as the amount exceeds Mr. Mudit's annual salary.
 - (d) The deposit is invalid unless approved by the company's shareholders in a general meeting. **(2 Marks)**

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) Nath Private Limited is a start-up company. Mr. P has been appointed as Accounts Manager of Nath Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2024. For this he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. P about the statements that are required to be prepared. **(5 Marks)**
- (b) Mr. Ramchandra is a partner and in-charge (and certifies financial statements) of A & Associates. The firm is appointed as an auditor firm of Badri Limited (listed company). Mr. Ramchandra retires from A & Associates and after some time joins Gupta & Gupta firm as a partner, on 20/05/24. In the general meeting of Badri Limited held on 15/06/24, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Badri Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company? **(5 Marks)**
- (c) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for Payment of commission of U.S. \$ 20,000 on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies. **(4 Marks)**
2. (a) Samay Publishing Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ₹ 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner? Give your answer as per the provisions of the Companies Act, 2013. **(5 Marks)**

- (b) Mr. Kaushal is a Chartered and an MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Kaushal can be classified as the Promoter of XYZ Limited? Examine the same under the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain the following with reference to the provisions of the General Clauses Act, 1897:
- (i) Person
 - (ii) Document **(4 Marks)**
3. (a) Trinity school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2024, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Trinity school, in such a case? **(5 Marks)**
- (b) A General Meeting of ABC Private Ltd was scheduled to be held on 15th April, 2024 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2024 was deposited by Mr. Y with the company at its registered office on 11-04-2024. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, M and N were present before the meeting.
- According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? **(5 Marks)**
- (c) Write short notes on the following in understanding definitions while interpreting statutes:
- (i) Ambiguous definitions
 - (ii) Definitions subject to a contrary context **(4 Marks)**
4. (a) State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013. **(5 Marks)**

- (b) Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (c) What are the differences between interpretation and construction in the legal context, and how do these two concepts relate to each other as per Interpretation of Statute? **(4 Marks)**
5. (a) Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:
- (i) The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 have given their consent in writing for conducting the meeting in Lonavala.
- Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013. **(5 Marks)**
- (b) Form Limited is engaged in the business of manufacturing shoes for kids. It is required to hold its Annual General Meeting (AGM) for the financial year ending 31st March 2024 by 30th September 2024. However, due to internal disputes among the directors, the company was unable to convene the AGM by the due date.
- Explain the relevant provisions of the Companies Act, 2013, with respect to the filing of the financial statements with the Registrar in this case. **(5 Marks)**
- (c) ABC Limited operates a factory situated near a river. As per a recent Central Act, factories must be located at least 5 kilometers away from any river. A dispute arises when an environmental agency claims that ABC Limited's factory is only 4.5 kilometers away from the river, while ABC Limited contends that the distance is 5.3 kilometers as per the road distance measured along the winding path leading to the river.
- Based on the provisions of the General Clauses Act, 1897, advise whether the contention of ABC Limited is correct. **(4 Marks)**
6. (a) Mr. H acquired a property from PQR Limited which was mortgaged to ABC Bank. He settled the dues to ABC Bank in full and the same was registered with the sub-registrar who noted that the mortgage had been settled. But neither the company nor ABC Bank filed particulars of satisfaction of charge with the jurisdictional Registrar of Companies. Can Mr. H approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013. **(5 Marks)**

OR

- (a) Mr. Prakash purchased a commercial property in Mumbai belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Prakash came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Prakash's name contending that he ought to have the knowledge of charge created on the property of the company. In line with the provisions of the Companies Act, 2013, advise whether the contention of PQR Limited is correct? **(5 Marks)**

- (b) XYZ Limited, a company incorporated outside India and to which provisions of Chapter XXII of the Companies Act, 2013 are applicable, entered into a contract with ABC Limited, an Indian company, for the supply of machinery. After the machinery was delivered, ABC Limited failed to make the payment citing defects in the machinery.

XYZ Limited discovered that it had failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, relating to the registration of foreign companies in India. Despite this, XYZ Limited intends to file a suit against ABC Limited for payment.

Discuss whether XYZ Limited can initiate legal proceedings against ABC Limited in light of the non-compliance with Chapter XXII of the Companies Act, 2013.

Give your answer as per the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014]. **(5 Marks)**

- (c) Explain the meaning of the followings terms as defined under the Foreign Exchange Management Act, 1999:

(i) Authorised person

(ii) Currency

(4 Marks)

MODEL TEST PAPER 8
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Case Scenario based Multiple Choice Questions (MCQs)
3. Part II comprises questions which require descriptive type answers.

PART I – Case Scenario based MCQs (30 Marks)

Part I is compulsory

Case Scenario 1

ABC Publications Limited accepted deposits from the public to the tune of ₹ 70 Lakh on 1st May 2021, for a period of 36 months at an interest rate of 10% per annum. The repayment would be made on 30th April, 2024. It has complied with all the statutory requirements for the acceptance of deposits by a Public Limited Company.

One of the depositors Mr. Y was in urgent need of money as his son wanted to pursue his higher education abroad. His total deposit with ABC Publications Limited was ₹10 lakh. On 1st June 2022, he sent his request to the company asking for premature repayment of his deposit along with interest.

Another depositor, Mr. U had deposited ₹ 6 lakh in his name. On 18th September 2022, he sent an application to the company to change the name on his deposit and make it a joint holding in the names of himself, his wife and two children. The company is contemplating the requests received from its depositors.

In addition to the deposits received from the public, the company had also raised funds by amount received from a Public Sector Bank, by issue of bonds and debentures and amounts against issue of commercial papers which were issued according to the guidelines issued by the Reserve Bank of India.

On the basis of the given facts, and by applying the applicable provisions of the Companies Act, 2013 and the Rules therein, choose the correct answer of the following Questions: (MCQs 1-3 of 2 marks each)

1. Advise ABC Publications Limited regarding the amount and the interest that can be repaid to Mr. Y:
 - (a) The company cannot make premature repayment of the deposits.
 - (b) The company can prematurely repay the deposit along with interest @ 10% for a period of 13 months (1st May 2021 to 31st May 2022)
 - (c) The company can prematurely repay the deposit along with interest @ 9% for a period of 13 months (1st May 2021 to 31st May 2022)
 - (d) The company can prematurely repay the deposit along with interest @ 9% for a period of 11 months (1st May 2021 to 31st March 2022)

2. Advise ABC Publications Limited regarding the request of Mr. U:
 - (a) Mr. U cannot change his deposit to joint holding.
 - (b) The deposits can be held jointly only by Mr. U and his wife.
 - (c) The deposits can be held jointly by Mr. U, his wife and two children.
 - (d) The deposits can be held jointly by Mr. U and any two members only.
3. The Banker of ABC Publications Limited wanted a list of deposits accepted by the company. Advise the company on what among the following constitute deposit:
 - (a) Amount raised through bonds and debentures
 - (b) Any non-interest bearing amount received and held in trust
 - (c) Amount received from Public
 - (d) Amount raised through the issue of commercial paper as per the Reserve Bank of India guidelines and amount raised through bonds and debentures

Case Scenario 2

Combat Gaming Limited is a company incorporated outside India with a place of business in Rajasthan. To improve its gaming software, the company wanted to apply Artificial Intelligence technology. In order to raise more funds to meet out the investment cost, the company decided to issue shares. It issued prospectus of the company which was properly dated and signed according to the provisions of the Companies Act, 2013 and delivered them to the Registrar of Companies on 16th August 2023. The Registrar on verification of the documents found that the particulars in the prospectus was incomplete and issued a notice to the company saying that the prospectus is invalid. Hence, the directors scrutinized the documents and during the scrutiny it was observed by the CFO that there was a mistake in one of the documents delivered to the Registrar and hence altered that on 29th September 2023. Analyse, based on the above scenario and answer the following Questions: (MCQs 4-6 of 2 marks each)

4. According to the Companies (Registration of Foreign Companies) Rules, 2014, of the Companies Act, 2013, which of the following documents shall not be annexed to the prospectus?
 - (a) Any consent to the issue of the prospectus required from any person as an expert;
 - (b) Statement of preliminary expenses;
 - (c) 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
 - (d) A copy of underwriting agreement
5. Combat Gaming Limited has made alteration in documents delivered to the Registrar, they shall intimate to Registrar of Companies by _____
 - (a) 29th October

- (b) 13th November
 - (c) 28th November
 - (d) 9th October
6. Combat Gaming Limited has to deliver the required documents along with the appropriate fees to:
- (a) The Registrar of Companies, Rajasthan
 - (b) The Comptroller and Auditor General Office, New Delhi
 - (c) The Registrar of Companies, New Delhi
 - (d) The Company Law Board, New Delhi

Case Scenario 3

Mr. S is a well experienced technocrat in the field of manufacturing of computer hard discs and motherboard. He resigned from his job and wished to form a Limited Liability Partnership (LLP) with the object of manufacturing and trading of computer hardware. He wanted to include his close friends Mr. A, Mr. B, and Mr. C who are very familiar in the same field and worked in the foreign companies also.

All three friends had accepted the invitation of Mr. S to be partners of the LLP. Mr. S wanted to ensure whether all the three friends are resident of India and requested them to provide the details of their stay in India. During the previous financial year, Mr. A has stayed in India for a period of 170 days, Mr. B stayed in India for 110 days and Mr. C stayed in India for 100 days. All the partners had given their consent to act as designated partners. He applied for the reservation of desired name to the Registrar and also paid the prescribed fees.

Based on the above facts, answer the following Questions: (MCQs 7-9 of 2 marks each)

7. The name applied for has been approved by the Registrar. The approved name of LLP shall be valid for a period of _____ from the date of intimation by the Registrar.
- (a) 2 months
 - (b) 1 month
 - (c) 3 months
 - (d) 6 months
8. Which of the following combinations of partners, if appointed as designated partners, will not be in accordance with the provisions laid down by Limited Liability Partnership Act, 2008?
- (a) Mr. A, Mr. B and Mr. C
 - (b) Mr. B and Mr. C
 - (c) Mr. A and Mr. C
 - (d) Mr. A and Mr. B

9. In how many days, a Limited Liability Partnership shall file with the Registrar, the particulars of every individual who has given his consent to act as designated partner?
- (a) Within thirty days of incorporation of LLP
 - (b) Within thirty days of his appointment
 - (c) After forty five days of incorporation of LLP
 - (d) After sixty days of his appointment

Case Scenario 4

Progressive Management College have introduced a Global Management Diploma Course which is of 12 months duration. Out of 12 months, 11 months studies are held in India and rest of 1 month is earmarked for foreign tour. Rudra Pratap is the Principal of the college. After taking requisite permission from the competent Ministry, the cultural tour programme was chalked out and the team visited Malaysia, Singapore, Australia and New Zealand.

Rudra Pratap's daughter Payal got admission in a medical college situated in California, United States of America. For fee and other expenses, Payal needs USD 2,25,000. Rudra Pratap contacted his banker to know the procedure for availing of foreign exchange and the authority to whom he shall apply. His banker properly guided all the relevant procedures for availing of the foreign exchange.

Rudra Pratap's brother Sourya Pratap went to UK some years ago, where he joined a company in managerial position. He intermittently visits to India and maintains a Non-Resident Special Rupee Scheme Account (NRSR) in Mumbai. He wanted to make remittance of interest earned in the NRSR Account and asked his bankers for the required formalities.

Based on the above facts, answer the following Questions: (MCQs 10-12 of 2 marks each).

10. For the purpose of cultural tours, approval of which Ministry is required to be obtained ?
- (a) Ministry of Human Resources Development
 - (b) Ministry of External Affairs
 - (c) Ministry of Home Affairs
 - (d) Ministry of Commerce and Industry
11. For availing foreign exchange for studying abroad, which of the following option is correct:
- (a) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad is prohibited.
 - (b) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad requires prior approval of Government of India.
 - (c) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad requires prior approval of RBI.
 - (d) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad do not require prior approval of RBI.

12. The remittance of foreign exchange for arranging of cultural tour for the students is an example of:
- Capital Account Transactions
 - Current Account Transactions
 - Hybrid Transactions
 - Amortised Transactions
13. Super Brain Coaching Limited was engaged in offline coaching of students for various competitive examinations. It was one of the pioneer in its field. It suffered losses due to various social and government restrictions imposed on study centers. On account of this, it defaulted in the repayment of term loan for the first two quarters of the financial year 2023-24. However, Super Brain Coaching Limited adapted itself to the changing circumstances and shifted to online mode of coaching and revived its financial conditions. On 31st December 2023, it cleared all the dues and regularized the term loan. Super Brain Coaching Limited wants to issue equity shares with differential rights. When can the issue be made?
- On or after January 1st 2029
 - On or after April 1st 2029
 - On or after April 1st 2027
 - On or after January 1st 2027 **(2 Marks)**
14. An Act has been passed by the government and though sufficient time has elapsed since the Act was passed, it has not been brought into force by the Government.
- Which of the following is correct in the light of the provisions of the General Clauses Act, 1897?
- The court can issue a mandamus with a view to compel the government to bring the Act into operation on a particular day.
 - The court can through a writ direct the Government to consider the question as to when the Act should begin to operate.
 - The court can publish a date in Official Gazette as an effective date for enforcement of the Act.
 - The court cannot direct the government to consider the question as to when Act should begin to operate. **(2 Marks)**
15. With reference to the provisions of the General Clauses Act, 1897, in all Legislations and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken:
- To exclude female
 - To exclude boy child
 - To exclude girl child
 - To include females **(2 Marks)**

PART – II Descriptive Questions

Question No.1 is compulsory.

*Attempt any **four** questions from the remaining **five** questions.*

(70 Marks)

1. (a) SAB Health Products Limited issued equity shares worth ₹ 5,00,00,000 (5,00,000 equity shares of ₹ 100 each) and it was fully subscribed and partly paid at ₹ 50 each. The company made a call to all its subscribers to pay a sum of ₹ 30 for each share held by them. Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid. Is his claim justified? Another shareholder Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him. Referring to the provisions of the Companies Act, 2013 and Rules made there under, examine whether the directors of SAB Health Products Limited permitted to do so? **(5 Marks)**
- (b) (i) Right Trading Limited is a company engaged in trading of automobile spare parts. During the current financial year 2024-25, Mr. J the CFO retired due to bad health. The company appointed Mr. C as the new CFO. On verification of the financial statements and statutory returns of the company, Mr. C advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether M/s Right Trading Limited can do so? **(3 Marks)**
- (ii) M/s DEF is conducting the audit of Right Trading Limited for the past 9 years. Now due to the requirement of rotation of auditors, M/s DEF is going to retire at the upcoming Annual General Meeting and in its place M/s XYZ will be appointed as the Auditor of Right Trading Limited. One of the partner Mr. F, who was in charge of the certification of the financial statements of the company retired from the firm of M/s DEF and joined the firm of M/s XYZ.

Examine, considering the provisions of the Companies Act, 2013 about the validity of the appointment of M/s XYZ. **(2 Marks)**
- (c) Ms. Rose was an Indian citizen who got a job in a software company in USA. She went to USA and stayed there for 12 years. During her stay, she purchased a house in USA for her residence. Then due to some personal issues she moved back to India and joined a software company in India. As she had moved back to India, she let out her house in USA and deposited the rent in her account in USA. Out of that amount, she purchased another house in USA.

Based on the above facts, answer the following referring to the provisions of the Foreign Exchange Management Act, 1999.

- (i) Whether Ms. Rose can purchase the house in USA and continue to retain it even after returning to India?
- (ii) Whether Ms. Rose can purchase another house in USA after returning to India? **(4 Marks)**

2. (a) Stuti Ceramic Pvt. Ltd. (SCPL) manufactures crockery items which are predominantly used only by the domestic household customers. Now the company wants to expand its area of operation to manufacture all types of crockery items and cutlery for the use of big hotels. For this expansion plan, the company needs funds of around ₹ 500 lakh. The company does not want to convert itself from private company to public company since the promoters do not want to dilute their equity stake otherwise the public company have the option to raise the funds through public issue. The company explored the other avenue of raising funds by issue of right shares to the existing shareholders, however only ₹ 100 lakh could be generated. The banks and financial institutions are also reluctant to increase their exposure in the company.

Referring to the provisions of the Companies Act, 2013, advise the SCPL, whether the company can raise further funds through private placement issue. If so, are there any limit for fresh offer and time limit of allotment of securities? **(5 Marks)**

- (b) Dolls Toys Limited is having a net- worth of ₹ 310 crore, paid up share capital of ₹ 200 crore, free reserves and security premium of ₹ 110 crore and turnover of ₹ 300 crore. Dolls Toys Limited wants to accept deposits from public other than its members.

- (i) Referring to the provisions of the Companies Act, 2013, state whether Dolls Toys Limited is permitted to accept the deposits from public other than its members.
- (ii) It is further mentioned that Dolls Toys Limited is in urgent need of funds as one of its contract is on the verge of completion and it is promising to repay the deposits within a period of four months. Is Dolls Toys Limited permitted to accept deposits with repayment period of 4 months? **(5 Marks)**

- (c) Referring to the provisions of the General Clauses Act, 1897, answer the following questions:

- (i) Whenever a new law is enacted by the Government of India, what shall be its date of coming into force?
- (ii) Whenever a new law is enacted to replace the existing law, it repeals the old enactment. Describe the points which shall not have any effect of repeal of the old enactment. **(4 Marks)**

3. (a) The paid up share capital of Star Furnishing Limited is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each as at 31st March, 2024. Out of this, Home Decor Limited is holding 6,00,000 equity shares and the remaining equity shares of 4,00,000 held by others.

Simultaneously, Star Furnishing Limited is holding 7% equity shares of Home Decor Limited out of which 2% equity shares are held as a legal representative of a deceased member of Home Decor Limited. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

- (i) Can Star Furnishing Limited make further investment in equity shares of Home Decor Limited during 2024-25?
 - (ii) Can Star Furnishing Limited exercise voting rights at the Annual General Meeting of Home Decor Limited? **(5 Marks)**
- (b) Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ₹ 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.

During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023.

So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.

Further, the company management pleaded that it is the responsibility of the financier i.e. Goodwill Bank to get the charges registered with the Registrar since the registration of charge is to be effected in favour of the Bank and for Bank's own benefit, so the NTL is in no way responsible for getting registration or for delayed registration.

In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:

- (i) When trigger point for the registration of charge shall arise,
 - (a) at the time of credit limit sanctioned by the Bank; or
 - (b) at the time of availing of credit limit when cheque was issued by the company?
 - (ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd? **(5 Marks)**
- (c) Explain the rule which suggests that the 'Plain word requires no explanation' and 'Technical words be understood in technical sense only'. **(4 Marks)**
4. (a) XYZ Limited is a company having a paid up equity share capital of ₹ 75 crore. Though it was performing well in the recent years it suffered losses in the first and second quarter of the financial year 2023-2024.

In order to sustain its image, the Board of Directors declared an interim dividend at the rate of 30 percent on the paid-up equity share capital on 4/10/2023. The following are the additional information extracted from the books of account for the past 5 Financial Years:

Financial year ending 31st March	Rate of Dividend declared
2019	20%
2020	15%
2021	15%
2022	15%
2023	30%

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 30% interim dividend. **(5 Marks)**

- (b) M/s Strong Steels Limited Liability Partnership firm was incorporated on 01st April 2010 with ten partners. The LLP had very good business and made considerable profits during the past years. Recently due to obsolete practices, M/s Strong Steels Limited LLP started making loss. Also, M/s Strong Steels LLP did not file its annual returns from 2020-21. Three partners decided that the LLP be wound up by the Tribunal. The remaining partners objected to it. Referring to section 64 of the Limited Liability Partnership Act, 2008, can the Tribunal pass an order to wound up M/s Strong Steels LLP? Also state the provisions and penalty for not filling annual return with the Registrar. **(5 Marks)**
- (c) (i) What is the purpose of inclusion of 'definitions' of certain words and expressions in the body of any statute?
- (ii) The definition sometimes includes the words 'mean', 'include', 'means and include' and 'to apply to and include'. What is the meaning of such words? **(4 Marks)**
5. (a) Sanjana joined a company named as Designers Cloths Ltd. as an Independent Director. In order to know more about the company, she wanted to inspect the books of account and minutes books of the Board Meetings held during the previous three years.
- The company is keeping the books of account and other records at its Registered Office, which is at Mumbai whereas Sanjana resides in Kolkata. Therefore, through power of attorney, Sanjana authorised her friend Avantika, who is a Chartered Accountant and does practice in Mumbai, to make an inspection of the books of accounts and minutes books of the meetings of the Board.
- Giving the relevant provisions of the Companies Act, 2013 and its Rules made thereunder, examine, whether Avantika can make inspection on behalf of Sanjana. **(5 Marks)**
- (b) A, B, C and D are the partners of Alpha LLP and have equal share in the profits and losses of the LLP. A has made an agreement to transfer 70% of his share in the profits of Alpha LLP to his daughter X.

X wanted to access information about the trading transactions of Alpha LLP claiming that she is entitled to the information as she receives a percentage of profits from the LLP. The partners refused to grant her access. Does X have any remedy against the denial according to the provisions of the Limited Liability Partnership Act, 2008? Are the partners correct in denying access to X? **(5 Marks)**

- (c) (i) In a contract of sale, Mr. A fraudulently sold certain unmarketable goods to Mr. B. Now Mr. A is liable for the fraudulent activity under both the Indian Contract Act, 1872 and the Sale of Goods Act, 1930. State the provision as per the General Clauses Act, 1897 as to whether his offence is punishable under the both the Acts?
- (ii) Mr. P bought a car from Mr. G who was his friend. Mr. P did not check the car or test drive it. Whether the purchase made could be said to be made in good faith? Explain with reference to the provisions of the General Clauses Act, 1897. **(4 Marks)**
6. (a) Silk Textile Limited is a company which is incorporated in India. It holds two subsidiaries- Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Silk Textile Limited intends to call an Extraordinary General Meeting (EGM) of Silk Textile Limited. During the same time, the Board of Print Limited also wanted to hold an EGM on urgent basis at Dubai. The Chairman with the consent of his Board wanted to hold the EGM of Silk Textile Limited at Dubai so that he can attend both the EGM. But the Company Secretary advised the Chairman that he cannot hold the EGM outside India.

Referring to the provisions of the Companies Act, 2013, advise the Board of Directors on the following:

- (i) Whether the Board of Silk Textile Limited can hold its EGM at Dubai?
- (ii) Whether the EGM of Print Limited can be held at Dubai? **(5 Marks)**

OR

- (a) Creative Textiles Ltd. is an unlisted public company. The company's paid-up share capital is ₹ 50 lakh consisting of 5 lakh shares having face value of ₹ 10 each.

Raman is having 50,000 shares in the company. He is not happy with Somnath, who is a director in the company. He believed that Somnath is acting against the interest of the company. Raman wanted to remove Somnath from the directorship. Removal of a person from the directorship requires the approval of the shareholders in the general meeting. The Annual General Meeting (AGM) of the company has recently been concluded and the next AGM will be held in the next year. Considering the case and referring to the provisions of the Companies Act, 2013, advise:

- (i) Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?
 - (ii) If the company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM? **(5 Marks)**
- (b) Beauty Cosmetics, a company incorporated in Korea has established its branch office in Chennai for conducting its business in India. The structure of paid-up share capital of Beauty Cosmetics as at 31st March 2024 is as below:

The company does not have any Preference Share Capital.

Equity share capital held by Mr. L, an Indian citizen: 10%

Equity share capital held by Mr. R, an Indian Citizen: 20%

Equity share capital held by Fairness Cosmetics Limited, an Indian company: 20%

You being a Chartered Accountant are asked to explain with reference to the provisions of the Companies Act, 2013:

- (i) Whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India, and
 - (ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company? **(5 Marks)**
- (c) Mitali Diamonds Limited is a company engaged in the business of cutting, polishing and trading of diamonds in and outside India. The company exports the diamonds to USA. For the last five financial years, the foreign exchange earned by the company in exporting diamonds is as under:

FY 2023-24	USD 1,25,000
FY 2022-23	USD 1,10,000
FY 2021-22	USD 95,000
FY 2020-21	USD 98,000
FY 2019-20	USD 93,000

The company wants to give donation of USD 10,000 to an institution situated in USA which provides technical support and training in the field of cutting and polishing of raw diamonds. This will help the company in guiding its own employees, posted in USA to get the requisite training.

Referring to the provisions of the Foreign Exchange Management Act, 1999, state whether the company can give donation to such institution in USA? **(4 Marks)**

ANSWER OF MODEL TEST PAPER 1
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

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).

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.

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.

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.

- 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.

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.

ANSWER OF MODEL TEST PAPER 2
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.

ANSWERS OF MODEL TEST PAPER 3
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWER TO PART I CASE SCENARIO BASED MCQS

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

ANSWER TO PART II DESCRIPTIVE QUESTIONS

1. (a) Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.

First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.

Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.

Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Third – Where the holders of not less than 10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to

have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

- (i) In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.

Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.

- (ii) Total number of dissenting shareholders = $50,000 - 40,000 = 10,000$.

Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal = $10\% \text{ of } 50,000 = 5,000$.

In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

- (b)** 1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-
- a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and

- b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

- (c) According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

- (i) In the given question, Mr. L will be treated as a person resident outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. in Paris, as he has gone out of India for or on taking up employment outside India.

His return to India for 10 days to attend a family function, will not alter his residential status.

- (ii) Mr. L will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

- 2. (a) (i) Rule 14 (1) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year.

Rule 14 (2) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014* has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

- (ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

- (iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

- (b) (i) As per the Companies Act, 2013, in case of joint shareholders, they must concur in voting unless the articles provide to the contrary.

As per Regulation 52 of Table F, the voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company

as to the order in which their names shall appear in the register of members.

Accordingly, in case of Mr. M and Mr. P, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is cast in favour of resolution or against it.

- (ii) According to section 76 (1) of the Companies Act, 2013, an “eligible company” means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

Okara Limited is having net worth of ₹ 110 crore. Hence, it falls in the category of ‘eligible company’ and thus can accept the deposits from public.

- (c) According to section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

In the given question, Mr. Sharad was granted authorization to appoint the said employees. This implies (in terms of the General Clauses Act, 1897) that he also had the power to dismiss or suspend these employees. Hence, Mr. Suresh’s argument is not valid.

3. (a) **Pre-requisites for issue of bonus shares**

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

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

- (b) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.

Here, the term ‘members personally present’ refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

- (i) Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present.

Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates.

Hence, total 15 members were present at the meeting held on 10.12.2023.

Thus, the requisite quorum was present.

- (ii) In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

(c) Difference and Relationship between Interpretation and Construction

The two terms- ‘Interpretation’ and ‘Construction’, are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be ‘interpretation’ of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to ‘construction’. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

4. (a) According to section 130 of the Companies Act, 2013, a company shall not:
- a. re-open its books of account and
 - b. recast its financial statements,

unless an application in this regard is made by:

- a. the Central Government,
- b. the Income-tax authorities,
- c. the Securities and Exchange Board of India (SEBI),
- d. any other statutory regulatory body or authority or
- e. any person concerned.

& an order is made by a court of competent jurisdiction or tribunal to the effect

- a. That the relevant earlier accounts were prepared in a fraudulent manner; or
- b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(b) According to section 6 of the Limited Liability Partnership Act, 2008,

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

(c) It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other. A specific rule will override a general rule. This principle is usually expressed by the maxim, "*generalia specialibus non derogant*".

However, this rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only

then such natural meaning will prevail. The court shall not attempt an interpretation based on equity and harmonious construction.

5. (a) According to section 31 of the Limited Liability Partnership Act, 2008,

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

(2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(b) The relevant provision under the Companies Act, 2013 deals with the prohibition on the appointment of auditors due to conflict of interest is governed by Section 141(3)(d).

Section 141(3)(d) states that a person shall not be eligible for appointment as an auditor of a company if such person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

Golden Smith Ltd. is prohibited from appointing M/s Kukreja & Associates as its audit firm due to the presence of Mr. Shyam, who is a partner in both M/s Krishna & Associates and M/s Kukreja & Associates. According to rules, this creates a conflict of interest. This prohibition lasts for 5 years from the end of M/s Krishna & Associates' term as auditors, which in this case is until the year 2031. After this cooling-off period, Golden Smith Ltd. may freely choose to appoint either M/s Kukreja & Associates or M/s Krishna & Associates as its auditors.

(c) Gender and number

According to section 13 of the General Clauses Act, 1897, in all legislations and regulations, unless there is anything repugnant in the subject or context-

(1) Words importing the masculine gender shall be taken to include females, and

(2) Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be

construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in Section 125(1) (d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply.

6. (a) (i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
- (b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement 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.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.

Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

- (ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

- (iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.
- (b)** Under Section 388 of the Companies Act, 2013, certain requirements must be met when including statements made by experts in a prospectus for securities issued by a company incorporated or to be incorporated outside India.

Firstly, if the prospectus includes a statement made by an expert, the expert must give written consent to the inclusion of the statement in the form and context in which it appears. If the expert withdraws their consent before the prospectus is delivered for registration, or if there is no statement indicating that the expert has given and not withdrawn their consent, the prospectus cannot be issued, circulated, or distributed in India.

Secondly, the prospectus must have the effect, upon application, of rendering all persons concerned bound by all the provisions of Section 33 (Issue of application forms for securities) and Section 40 (Securities to be dealt with in stock exchanges), as far as applicable. This ensures that all relevant parties are subject to the legal obligations outlined in these sections.

It's important to note that a statement made by an expert is deemed to be included in a prospectus if it appears on the face of the prospectus, is incorporated by reference, or is issued with the prospectus.

Hence, compliance with the requirements of Section 388 is crucial for the validity of a prospectus issued for securities by a company incorporated or to be incorporated outside India. Failure to meet these requirements may render the prospectus invalid for distribution in India.

- (c)** Yes, the stated transaction falls under the category of current account transactions. As per the requirements stated under Schedule III of the Current account Transaction Rules 2000, under the FEMA, 1999, Mr. Patel payment for his child's education fees in the United States represents a payment for a service (education) provided by a foreign entity (an educational institution in the United States).

According to FEMA, payments for education expenses of family members residing abroad are considered current account transactions. Therefore, Mr. Patel's payment for his child's education fees falls under this classification.

Further, the purpose of the transaction is to cover the living and education expenses of a family member (Mr. Patel's child) residing abroad, which aligns with the definition of current account transactions. Patel's payment for his child's education fees in the United States qualifies as a current account transaction under FEMA, as it meets the criteria outlined in the regulations.

ANSWER OF MODEL TEST PAPER 4
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, Chitralekha (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.

ANSWER OF MODEL TEST PAPER 5
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.

ANSWER OF MODEL TEST PAPER 6
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWER TO PART – I CASE SCENARIO BASED MCQS

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

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) **Sweat equity shares of a class of shares already issued.**

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance

with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders.

Alpha Limited can issue sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

- (b) (i) Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Section 141(4) provides where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in section 141(3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

In the present case, Mr. Prem, an auditor of A Limited, joined as partner with consultancy firm where Mr. Ajay has become a partner and Mr. Ajay is also the Finance executive of A Limited. Hence, Mr. Prem has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of A Limited.

- (ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds 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.

In the present case, Mr. Tom is holding security of ₹ 1,00,000 in the B Limited, therefore, he is not eligible for appointment as an auditor of B Limited.

- (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.

Accordingly,

- (i) It is a current account transaction, where A is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. B cannot obtain US \$ 2,000 for the said purpose.

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

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

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

- (b) As per section 2(43) of the Companies Act, 2013, free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves.

- (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) Validity of Resolution passed in the EGM called by the Requisitionists

As per section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.

The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section (5) of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner in which the meeting is called and held by the Board.

Sub-section (6) of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. Jai and Mr. Narayan holding ₹ 60,000 (each holding ₹ 30,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

- (c) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.
4. (a) According to section 127 of the Companies Act, 2013, in case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:
- (i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.
 - (ii) The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (b) **Financial Year:** According to section 2(1)(l) of the Limited Liability Partnership Act, 2008, “Financial year”, in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.
- However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.
- (c) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.
- The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.
- It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).
5. (a) According to section 24(3), 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 ROC, Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024.

- (b) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting (AGM), in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (c) **Good Faith:** According section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

- 6. (a) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (ii) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not 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:

- (1) 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);
- (2) 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) 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) According to section 2(j) of the Foreign Exchange Management Act, 1999, 'Current Account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
 - (ii) payments due as interest on loans and as net income from investments.
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children.

ANSWER OF MODEL TEST PAPER 7
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWER TO PART – I CASE SCENARIO BASED MCQS

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

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) As per section 2(40) of the Companies Act, 2013, Financial Statement in relation to a company, includes—
 - (i) a balance sheet as at the end of the financial year;
 - (ii) 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;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. P has to prepare the prescribed financial statements except Cash Flow Statement; since Nath Private Limited is a start-up private company.

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

Provided that –

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

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

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

Here, Mr. Ramchandra has retired from A & Associates and joined Gupta & Gupta Firm. Mr. Ramchandra was a partner, in- charge Associates (and certifies the financial statement of the company) in A & Associates. He retires from A & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Badri Limited (listed company) for a period of 5 years.

- (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.

Accordingly, Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies, is a transactions for which drawal of foreign exchange is prohibited.

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

In the given question, Samay Publishing Limited wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors. Since there is a prohibition, Samay Publishing Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

- (b) According to section 2(69) of the Companies Act, 2013, Promoter means a person:-

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) In accordance with whose advice, directions or instructions the Board of Directors of the Company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

As the job profile of Mr. Kaushal is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that to only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

- (c) (i) **Person**

According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

- (ii) **Document**

According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.

3. (a) Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Trinity school was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.
- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(b) Validity of Resolution passed in the EGM called by the Requisitionists

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. Section 105(4) provides that a proxy received 48 hours before the meeting will be valid. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein.

Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

- (c) (i) **Ambiguous definitions:** Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.
 - (ii) **Definitions subject to a contrary context:** When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.
4. (a) **Persons responsible to maintain books:** As per section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:
- (a) Managing Director,
 - (b) Whole-Time Director, in charge of finance
 - (c) Chief Financial Officer
 - (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
- (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 25 lakh rupees or such higher amount, not exceeding 5 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 40 lakh rupees or such higher amount, not exceeding 50 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) Difference and Relationship between Interpretation and Construction

The two terms- 'Interpretation' and 'Construction', are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

5. (a) Section 96(2) of the Companies Act, 2013 states that every Annual General Meeting (AGM) shall be called 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,

- (i) Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.
 - (ii) Kedar Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 98 members out of 100 have given their consent for conducting the meeting in Lonavala.
- (b) As per section 137 of the Companies Act, 2013, where the Annual General Meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

- (c) 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.

In this case, the distance between ABC Limited's factory and the river must be measured in a straight line on a horizontal plane, not based on the road or path distance. The environmental agency's claim that the factory is only 4.5 kilometers away in a straight line is correct. Since this measurement is less than the required 5 kilometers, the factory does not comply with the law.

Therefore, ABC Limited's contention is not correct.

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

- ♦ the debt has been satisfied in whole or in part; or
- ♦ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

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

The Registrar shall inform the affected parties within 30 days of making the entry in the Register of Charges.

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

Therefore, Mr. H can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

OR

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

Thus, section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Prakash, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property.

In view of above, the contention of PQR Limited is correct.

- (b) According to section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013, shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. However, the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Companies Act, 2013, applicable to it.

In this given question, XYZ Limited, a company incorporated outside India, has failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, which governs the registration and compliance requirements for foreign companies operating in India.

According to the Companies Act, 2013, non-compliance with Chapter XXII does not affect the validity of any contract, dealing, or transaction entered into by the company. Therefore, the contract between XYZ Limited and ABC Limited remains valid, and ABC Limited is still legally bound to fulfill its contractual obligations, including the payment for the machinery supplied.

Further, XYZ Limited cannot bring a suit, claim any set-off, make any counter-claim, or institute any legal proceeding related to the contract as it has not complied with certain provisions of Chapter XXII.

(c) (i) **Authorised person**

According to section 2(c) of the Foreign Exchange Management Act, 1999, Authorised person means an authorised dealer, money changer, off- shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities.

(ii) **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.

ANSWERS OF MODEL TEST PAPER 8
INTERMEDIATE COURSE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWER TO PART I- CASE SCENARIO BASED MCQS

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

ANSWER TO PART II- DESCRIPTIVE QUESTIONS

1. (a) As per section 50 of the Companies Act, 2013, (the Act) a company may, if so authorized by its Articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

As per section 51 of the Act, a company may, if so authorized by its Articles, pay dividends in proportion to the amount paid-up on each share. The Board of Directors of a company may decide to pay dividends on pro-rata basis if all the equity shares of the company are not equally paid-up.

Interest can be paid on such advance, if permitted by Articles. Here it is worth noting that, where the rate of interest is permitted by the Articles on such advance payment, same could be varied by shareholders in general meeting.

Further, section 49 of the Act, specifies that calls shall be made on a uniform basis on all shares that are falling under the same class. A

shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due.

Hence, in the light of the stated provisions, SAB Health Products Limited is permitted to do the following acts:

Is Mr. GH's claim justified?

Mr. GH is entitled to claim interest on money advanced by him and also dividend in proportion to the amount paid-up on each share, if so authorized by the Articles of the company.

In the matter of Mr. LK

Whereas, with respect to Mr. LK, calls shall be made on a uniform basis by the directors, on all shares that are falling under the same class as per section 49 of the Act. A call cannot be made on some of the members only, unless they constitute a separate class of shareholders.

Therefore, the action of the Board of Directors of SAB Health Products Limited towards Mr. LK for calling to pay the entire amount due by him in respect of the shares held by Mr. LK is invalid and not permissible.

(b) (i) Voluntary Revision of Financial Statements or Board's Report on the Approval of the Tribunal

As per section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

- a. the financial statement of the company does not comply with the provisions of section 129; or
- b. the report of the Board does not comply with the provisions of section 134

they may prepare revised financial statement or board's report in respect of any of the 3 preceding financial years after obtaining the approval of the Tribunal on an application made by the company within fourteen days of the decision taken by the Board.

A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within 30 days of the date of receipt of the certified copy.

In the given question, Mr. C has advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22. The Board of Directors can do so as the said financial statements are pertaining to not later than three preceding financial years (from 2024- 2025) and by obtaining the approval of the Tribunal within fourteen days of the decision taken by the Board.

- (ii)** As per section 139(2) of the Companies Act, 2013, listed companies and such class of companies as prescribed, shall not appoint or re- appoint an audit firm as auditor for more than two terms of five consecutive years.

Further, on the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a company immediately preceding the financial year.

It means, if a partner (common partner), who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of Chartered Accountants, such other firm shall also be ineligible to be appointed as succeeding auditor of same company after two terms of five consecutive years. i.e. cooling period. [Rule 6(3) of Companies (Audit and Auditors) Rules, 2014]

The audit of Right Trading Limited was conducted by M/s DEF and after expiry of two consecutive terms, it is proposed to appoint

M/s XYZ. Mr. F is the common partner in M/s DEF and M/s XYZ, hence, the appointment of M/s XYZ is not valid.

(c) (i) Can Ms. Rose purchase the house in USA and continue to retain it even after returning to India?

According to section 6(4) of the Foreign Exchange Management Act, 1999, (the Act) a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Ms. Rose stayed in USA for 12 years, hence she must have become a non-resident for those years. She purchased a house during this time.

As per the above provisions, Ms. Rose can rightfully purchase the house in USA and continue to retain it after returning to India.

(ii) Can Ms. Rose purchase another house in USA after returning to India?

Ms. Rose deposited the amount of rent from the house to her account in USA. Out of that amount she purchased another house in USA after returning to India. Ms. Rose is a person resident in India due to joining an employment in India.

As per section 6(4)(iv) of the Foreign Exchange Management Act, 1999 (FEMA), a person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by her

and the transactions is not in contravention to extant FEMA provisions.

In view of the above, Ms. Rose can rightfully purchase another house in USA after returning to India.

2. (a) Whether Stuti Ceramic Pvt Ltd (SCPL) can raise funds through Private Placement?

Yes, SCPL can raise funds through the private placement of shares.

Section 23(2)(b) of the Companies Act, 2013 (the Act) provides that a private company may issue securities through private placement by complying with the provisions specified in section 42 of the Act in supplement with those stated under Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Meaning of Private Placement

According to the Explanation I to section 42(3) of the Act, "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer- cum-application, which satisfies the conditions specified in this section.

Offer to be made only to a select group of persons

A private placement shall be made only to a select group of not more than two hundred (200) persons (referred to as "identified persons") in a financial year who have been identified by the Board after passing a special resolution [Section 42(2) read with Rule 14(1) of the Companies (Prospectus and Allotment of Securities), Rules 2014].

Limit on Fresh Offer

As per section 42(5) of the Act, no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Thus, Stuti Ceramic Pvt. Ltd. can raise further funds through private placement issue after the allotments with respect to right issue for ₹ 100 lakh have been completed and subject to the maximum number of 200 persons (identified persons) under section 42(2) and by complying with the procedures stated in Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Time Limit for Allotment of Securities

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be

liable to repay that money with interest at the rate of 12% per annum from the expiry of the sixtieth day.

(b) (i) Whether Dolls Toys Limited is permitted to accept deposits from Public other than its members?

Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposits) Rules, 2014 deal with acceptance of deposits from public other than its members by 'eligible companies'.

Accordingly, a public company, having net worth of not less than ₹ 100 crore or turnover of not less than ₹ 500 crore, and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other than its members.

Eligible Company: As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, a public company, having net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees, may accept deposits from persons other than its members. Such type of public company is known as 'eligible company'.

In the given question, Dolls Toys Limited has a net-worth of ₹ 310 crore and turnover of ₹ 300 crore.

Since at least one condition is satisfied that is net worth is ₹ 310 crore which is more than the prescribed limit, and assuming it has obtained the prior consent by a special resolution and filed it with the Registrar of Companies, it is permitted to accept deposits from public other than its members.

Thus, Dolls Toys Limited is an eligible company and hence can accept deposits from public other than its members.

(ii) Whether Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposits cannot exceed thirty- six months.

Exception to the rule of tenure of six months: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that:

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

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

Hence, Dolly Toys Limited is permitted to accept deposits with repayment period of 4 months in compliance to the stated provisions.

However, by virtue of exception to the rule of tenure of six months as stated above, since the company cannot accept the deposit exceeding 10% of the aggregate of the paid up share capital, free reserves and security premium account which is ₹ 310 crore therefore the company can accept the deposits to the extent of ₹ 31 crore only.

- (c) (i) As per section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Act made before the commencement of the Indian Constitution and/or, of the President, in case of an Act of Parliament.

Where, if any specific date of enforcement is prescribed in the Official Gazette, the Act shall into enforcement from such date.

- (ii) According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

3. (a) (i) Can Star Furnishing Limited, make further investments in equity shares of Home Décor Limited during 2024-25?

According to section 19 of the Companies Act, 2013, a subsidiary company is not allowed to hold shares of its holding company. The prohibition also extends up to the nominees of the subsidiary company. Also, a 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.

The prohibition does not apply to the following cases:

- (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.

It is also provided that the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

In the given question Star Furnishing Limited is a subsidiary of Home Décor Limited as it holds 60% (6,00,000/10,00,000 shares) shares of Star Furnishing Limited. Simultaneously, Star Furnishings Limited is holding 7% equity shares in Home Décor Limited out of which 2% are held as a legal representative of a deceased member of Home Décor Limited.

These shares are held by Star Furnishings Limited before Home Décor Limited became its holding company. However, after becoming its subsidiary, Star Furnishings Limited cannot make further investment in Home Décor Limited.

- (ii) As per second proviso to section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Accordingly, Star Furnishings Limited can exercise voting rights at the Annual General Meeting of Home Décor Limited only in respect of 2% shares held in the capacity of legal representative and not for other 5% shares.

- (b) (i) According to section 77(1) of the Companies Act, 2013, it shall be the duty of a company creating a charge to register it with the Registrar of Companies within 30 days from the date of creation of the charge. The obligation to register a charge arises not merely at the time of sanctioning the credit limit but when the charge is created.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favor of the lender.

The Trigger point for registration of charge arises when the Bank has sanctioned the mortgaged backed credit limit, documentation was done, papers of the property for creation of the mortgage was

tendered by the company for creation of fixation of the credit limits.

Here, the words 'creating a charge' refers to the accepting of the property papers for the purpose of creation of charge. Thus, it is the date when the credit limits were sanctioned as assigned to the company and not the date when the company had actually drawn a cheque from such credit limit.

(ii) Consequence of non-registration of charge [Section 77 (3) & (4)]

No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar.

This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respect of any property before the charge is actually registered.

(c) Rule that suggests 'Plain Word requires no explanation'

This Rule is called "Rule of Literal Construction".

It is a cardinal rule of construction that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning. Therefore, the language used in the statute must be construed in its grammatical sense. The correct course is to take the words themselves and arrive if possible, at their meaning without reference to cases, in the first instance.

If the phraseology of a statute is clear and unambiguous and capable of one and only one interpretation, then it would not be correct to extrapolate these words out of their natural and ordinary sense. When the language of a statute is plain and unambiguous it is not open to the courts to adopt any other hypothetical construction simply with a view to carrying out the supposed intention of the legislature.

This principle is contained in the Latin maxim "*absoluta sententia expositore non indiget*" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations— one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

Technical words are to be understood in a Technical sense only

This point of literal construction is that technical words are understood in the technical sense only.

In construing the word 'practice' in the Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369).

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

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

According to the given facts, XYZ Ltd. is facing losses in business during the first and second quarter of financial year 2023-2024. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 15% and 30% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates $(15+15+30=60/3)$ at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 30% during the F.Y. 2023-2024 is not valid.

- (b) According to section 63 of the Limited Liability Partnership Act, 2008, the winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up, may be dissolved.

As per section 64 of the Limited Liability Partnership Act, 2008, a LLP may be wound up by the Tribunal, if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or Annual Return for any 5 consecutive financial years.

In the present case, M/s Strong Steels LLP did not file its Annual Returns from 2020-21. In the financial year 2024-25, the default in filing of annual return has not continued for 5 consecutive years. In view of

the facts of the question and provisions of the Act, the Tribunal cannot pass an order to wind up M/s Strong Steels LLP.

The objection of remaining partners is correct.

Annual Return [Section 35]

(1) Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

(2) Penalty for non-filing of annual return:

LLP– ₹ 100 per day subject to maximum ₹ 1,00,000

Every Designated Partners – ₹ 100 per day subject to maximum ₹ 50,000.

(c) (i) Purpose of inclusion of ‘definition’ of certain words and expressions in the body of any statute

The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the Statutes ‘definitions’ of certain words and expressions used in the body of the statute.

When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. This is called an exhaustive definition. The Court cannot ignore an exhaustive statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

(ii) Restrictive and extensive 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.

We may also find a word being defined as 'means and includes' such and such. In this case, the definition would be exhaustive.

On the other hand, if the word is defined 'to apply to and include', the definition is understood as extensive.

5. (a) In terms of section 128(3) of the Companies Act, 2013 the books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as prescribed in Rule 4 of the Companies (Accounts) Rules, 2014.

The financial information shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

As per the facts of the question, the books of accounts and other records including minutes books are maintained at the registered office of Designer's Cloths Ltd. in Mumbai i.e. within India. Sanjana as the director of the company can inspect the books of accounts and minutes books. But she cannot authorize Avantika to make an inspection on behalf of her.

(b) Whether X has any remedy against the denial?

According to section 42 of the Limited Liability Partnership Act, 2008, the rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

In the given question, the partners of Alpha LLP are correct in denying access of information about trading transactions to X (daughter of A).

X does not have any remedy against the denial by the partners of Alpha LLP.

(c) (i) Whether offence is punishable under both the Acts?

According to section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. A who is liable for the fraudulent activity under both the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, will

be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

(ii) Whether Purchases made could be said to be made in Good Faith?

According to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act, 1897 is one of fact in *Maung Aung Pu v. Maung Si Maung*, it was pointed out that the expression 'good faith' is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act. The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Hence, in the given case, the purchase of car by Mr. P cannot be said to be made in good faith.

6. (a) (i) Can the Board of Silk Textile Limited can hold its EGM at Dubai?

As per section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

As per the facts given in the question, Silk Textile Limited is a Company incorporated in India and has two subsidiaries incorporated outside India. In Print Limited, it holds 80% of the shares and Stitch Limited is its wholly owned subsidiary. As Silk Textile Limited is incorporated in India the Company can call the EGM anywhere only in India. Hence, it cannot hold its EGM at Dubai (outside India).

(ii) Whether the EGM of Print Limited can be held in Dubai?

Print Limited is incorporated outside India and its 80% shares are held by Silk Limited (incorporated in India).

Hence, it is not a wholly owned subsidiary of Silk Limited. Only a wholly owned subsidiary of a company incorporated outside India, can hold its EGM outside India. In view of the above, Print Limited cannot hold its EGM in Dubai.

OR

- (a) (i) Can Raman, as an individual shareholder make a requisition for calling an EGM?**

According to section 100 of the Companies Act, 2013, in the case of company having a share capital, EGM may be called by the Board of Directors at the requisition of such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting.

If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

In the given question, Raman is holding 1/10th [5,00,000/50,00,000] of the paid up share capital. Hence, he can, even as a single shareholder (holding 1/10th of the paid up share capital), make a requisition to the company for calling the EGM.

- (ii) If the company does not call the EGM on the requisition of Raman**

If the company does not within 21 days from the date of receipt of a valid requisition from Raman, proceed to call the EGM for the consideration of the matter of removal of Somnath, on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called by Raman himself within a period of 3 months from the date of the requisition.[Section 100(4)].

In this regard, Rule 17 of the Companies (Management and Administration) Rules, 2014 containing the provisions with regard to calling of EGM by requisitionists shall be followed.

Further, section 100 (5) of the Act provides that a meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

- (b) (i) Whether Beauty Cosmetics shall be deemed to be a foreign company or an Indian company?**

As per section 2(42) of the Companies Act, 2013, a 'foreign company' means any company or a body corporate incorporated outside India which has:

- (a) a place of business in India whether by itself or through an agent physically or through electronic mode and
- (b) conducts any business activity in India in any other manner.

In the given question, Beauty Cosmetics, a Korean company has established a place of business in India (branch office in Chennai) and also carries on the business in India. Hence, Beauty Cosmetics shall be deemed to be a foreign company under the Companies Act, 2013 for the business carried on by it in India.

Further, according to section 379(2) of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:

- (i) one or more citizens of India; or
- (ii) by one or more companies or bodies corporate incorporated in India; or
- (iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and other prescribed provisions of the Companies Act, 2013, with regard to the business carried on by it in India as if it were a company incorporated in India.

In the given question, 50% (10% + 20% + 20%) of the share capital of Beauty Cosmetics (incorporated in Korea) is held by Mr. L (Indian Citizen), Mr. R (Indian Citizen) and Fairness Cosmetics Limited (Indian Company) respectively.

Hence, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India.

(ii) Whether Beauty Cosmetics, for the business carried on by it in India, be required to comply with the provisions of the Act?

Since, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India, it is required to comply with the relevant provisions of the Companies Act, 2013, as if it is an Indian company.

- (c)** As per Schedule III to the Foreign Exchange Management Act, 1999, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India, for donations exceeding 1% of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for:
- a. Creation of Chairs in reputed Educational Institutes,
 - b. Contribution to Funds (not being an investment fund) promoted by Educational Institutes; and
 - c. Contribution to a Technical Institution or Body or Association in the field of activity of the Donor Company.

In the given question, Mitali Diamonds Limited can donate lower of USD 3,300 [1% of (1,25,000 + 1,10,000 + 95,000)] or USD 5,000,000.

Thus, Mitali Diamonds Limited can give a donation of USD 3,300 without RBI approval and for USD 10,000 it shall require prior approval of the Reserve Bank of India to the said institution as this institution is a Technical Institution or Body or Association in the field of activity of the Donor Company.