

PAPER – 2: CORPORATE AND OTHER LAWS

PART – I – Multiple Choice Questions

Case Scenario - I

XYZ Technologies Ltd. is a public limited company registered under the Companies Act, 2013 and has a diverse shareholder base. Due to large number of shareholders and the fact that many of them reside in different parts of the country, there is a significant interest in appointing proxies to represent shareholders who cannot attend the meeting.

The Directors of XYZ Technologies Limited, desire to conduct an Extra-ordinary General Meeting (EGM) to discuss an important fund raising proposal. The meeting is scheduled to be held at 3 PM on 2nd February, 2025, and the notice of the meeting is sent to all the members as required by the provisions of the Companies Act, 2013.

As per the notice, the members who are unable to attend the meeting can appoint proxy and the proxy forms duly filled should be sent to the company so as to reach the company at least 48 hours before the meeting.

Mr. Praveen, a shareholder and experienced investor has often represented many shareholders in prior meetings. This time he has been approached by 52 members to act as their proxy.

Based on the facts given in the above case and by applying the relevant provisions of the Companies Act, 2013 and the applicable rules therein, choose the correct answer of the following MCQs: (Q. No. 1 to 3)

1. *Mr. Praveen has approached you to seek guidance that for how many members he can accord his confirmation to act as proxy as per the provisions of Section 105 of the Companies Act, 2013?*
 - (A) *Mr. Praveen can accord his confirmation to act as proxy for 52 members, if they are holding in aggregate more than 10 percent of the total share capital of the company carrying voting rights.*
 - (B) *Mr. Praveen can accord his confirmation to act as proxy for 52 members, if they are holding in aggregate not more than 10 percent of the total share capital of the company carrying voting rights.*

- (C) Mr. Praveen can accord his confirmation to act as proxy for 50 members, if they are holding in aggregate not more than 10 percent of the total share capital of the company carrying voting rights.
- (D) Mr. Praveen can accord his confirmation to act as proxy for 50 members, if they are holding in aggregate more than 10 percent of the total share capital of the company carrying voting rights. **(2 Marks)**
2. Mr. Rajan, a member of the company, entitled to vote at a meeting of the company shall be entitled to inspect the proxies lodged provided he has given _____.
(A) Not less than twenty four hours' notice to the company in writing of the intention so as to inspect the proxies lodged with the company.
(B) Not less than three days' notice to the company in writing of the intention so as to inspect the proxies lodged with the company.
(C) Not less than two days' notice to the company in writing of the intention so as to inspect the proxies lodged with the company.
(D) Not less than twelve hours' notice to the company in writing of the intention so as to inspect the proxies lodged with the company. **(2 Marks)**
3. As the Company Secretary of the Company, advise the Board of Directors to reply to the question raised by a member in the meeting with respect to the prescribed period for which the company shall preserve the register of members and copies of documents filed with ROC respectively for _____ and _____.
(A) 8 years, 8 years
(B) 8 years, Permanently
(C) Permanently, 8 years
(D) Permanently, permanently **(2 Marks)**

Case Scenario - II

Classical Diagnostics Ltd. (CDL) is a company engaged in the business of providing diagnostic services in all major cities of India. The CDL have paid-up capital of ₹ 700 crore. The face value of each of the share is ₹ 10 only. As a staff welfare scheme, the CDL has taken Group Mediclaim Policy for all its employees from Bharosa Insurance Company Ltd. (BICL).

BICL was incorporated in 2015 and was having paid-up capital of ₹ 1,500 crore. In order to raise further funds, the BICL has issued bonds, Unit Linked Insurance Plan and debentures to the public. The BICL had also issued Preference Shares on private placement basis and were offered to the employees of the CDL.

The CDL proposed to change the rights associated with the present shareholders. Out of the ₹ 700 crore of the paid-up capital, the promoter's holding was 60% and rest of the 40% was with the public and other financial institutions. The variation proposed in the shareholder's right is that whosoever surrenders their right to vote in the meeting will be given higher dividend (if declared by the company) which shall be 2% more than the shareholders who retain the right to vote.

The CDL called on Extra-ordinary General Meeting (EGM) for passing of the special resolution. Some of the shareholders did not consent to the proposal of the company and moved to the Tribunal against the variation.

Based on the facts given in the above case and by applying the relevant provisions of the Companies Act, 2013 and the applicable rules therein, choose the correct answer of the following MCQs: (Q. No. 4 to Q. No. 6)

4. *Bharosa Insurance Company Ltd. (BICL) has issued certain instruments. Which among the following shall not be covered under the definition of "Securities"?*

(A) Bonds
(B) Debentures
(C) Preference Shares
(D) Unit Linked Insurance Plan

(2 Marks)

5. *Classical Diagnostics Ltd. (CDL) proposed for variation in the shareholder's voting right. How much percentage of issued shares of that class shall be required for consent for passing such resolution?*

(A) The holders of atleast 51% of the issued shares of that class
(B) The holders of atleast 66% of the issued shares of that class
(C) The holders of atleast 71% of the issued shares of that class

(D) The holders of atleast 75% of the issued shares of that class **(2 Marks)**

6. Where the holders of at least _____ of the issued shares of a class who did not, consent to or vote in favour of the resolution for the variation, 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.
- (A) 1%
- (B) 10%
- (C) 66%
- (D) 95%
- (2 Marks)**

Case Scenario - III

Dr. Ronak Mosay, a renowned lyricist and a folk singer wants to perform with his musicians across the world on a Cultural tour, partially sponsored by Youth Welfare Department of his local government. His next show is in the city of Vancouver, Canada. Dr. Ronak Mosay is an Indian citizen and a person resident in India. Dr. Ronak Mosay is also having his brother living in Canada. Dr. Ronak Mosay also regularly keeps promoting and sponsoring Cricket tournaments in Canada. For his forthcoming tour to Canada, he wants to remit foreign exchange for hotel and for other event booking expense.

Based on the facts given in the above case and by applying the relevant provisions of the Foreign Exchange Management Act, 1999 and the applicable rules (if any) therein, choose the correct answer of the following MCQs: (Q. No. 7 to Q. No. 9)

7. For his show in Canada, he needs to obtain prior approval for remittance of foreign exchange from:
- (A) Ministry of Finance
- (B) Ministry of Information and Broadcasting
- (C) Ministry of Communication and Information Technology
- (D) Ministry of Human Resources Development (Department of Education and Culture)
- (2 Marks)**
8. Dr. Ronak Mosay has enquired from you that for which of the following purposes, is he allowed to draw foreign exchange?
- (A) For his own travel to Nepal

- (B) Remittance of US \$ 50,000 out of lottery winnings to his son in US
- (C) Remittance for purchase of sweepstakes
- (D) Gift of US \$ 10,000 to his brother in Canada **(2 Marks)**
9. Dr. Ronak Mosay desires to remit US \$ 1,50,000 for payment of prize money to the winning team in a cricket tournament in Canada. He needs to obtain approval from which of the following?
- (A) His bank only, as the amount is less than US \$ 2,50,000
- (B) No approval is required
- (C) The transaction is a prohibited transaction
- (D) Ministry of Human Resource Development (Department of Youth Affairs and Sports) **(2 Marks)**

Case Scenario – IV

Rohit and Anushka after passing out the CA examination, incorporated an LLP to work as the practicing Chartered Accountant. Rohit and Anushka were also titled as designated partners. After sometime, Rohit got an opportunity to provide consultancy services on an ongoing basis to a company based in Singapore. Rohit remained in India for 90 days during the Financial Year 2023-24. The LLP continues its operations from India with Anushka whereas Rohit participates in decision making remotely.

Based on the facts given in the above case and by applying the relevant provisions of the LLP Act, 2008 and the applicable rules therein, choose the correct answer of the following MCQs: (Q. No. 10 and Q. No. 11)

10. As per the LLP Act, 2008, the term resident in India means a person who has stayed in India for a period of:
- (A) not less than one hundred and twenty days during the financial year
- (B) not less than sixty days during the financial year
- (C) not less than one hundred days during preceding one year
- (D) not less than ninety days during preceding one year **(2 Marks)**
11. As per the LLP Act, 2008, whether above LLP fulfills the requirements of designated partner?

- (A) No, as both of the designated partners Rohit and Anushka should be resident in India
- (B) No, as both of the designated partners should be non-resident
- (C) Yes, as Rohit is a resident of India as defined under the LLP Act, 2008
- (D) Yes, as at least one of the designated partners should be resident in India and Anushka is a resident of India **(2 Marks)**

12. The term "Year" as per the General Clauses Act, 1897 means:

- (A) Financial year
- (B) A year according to the British calendar which starts from January to December
- (C) 365 days
- (D) Any period of 12 months **(2 Marks)**

13. The General Clauses Act, 1897 (Act) was enacted on 11th March, 1897 to consolidate and extend the General Clauses Act, _____ and _____.

- (A) 1857 and 1887
- (B) 1887 and 1893
- (C) 1878 and 1880
- (D) 1868 and 1887 **(2 Marks)**

14. Jade Suites LLC is a chain of hotels and restaurants all over the world. It is proposing to establish a Hotel at Goa. It has appointed a Chartered Accountant Mr. B for taking care of the registration formalities of the company. While the registration process was ongoing, the company entered into a lease agreement with a land owner for the construction of its Hotel. After few months, the Directors of Jade Suites LLC withdrew their interest in establishing a Hotel at Goa due to the news in social media regarding the fall in the tourism industry there. The land owner refused to repay the advance received by him. Can Jade Suites LLC sue the land owner in the capacity of a foreign company? Referring to the provisions of the Companies Act, 2013, choose the correct option:

- (A) Jade Suites LLC is a foreign company and can sue the land owner for the advance amount given in its capacity as a Foreign Company

- (B) *Jade Suites LLC is incorporated as a foreign company, it can't sue the land owner*
- (C) *The Registration process is not yet complete and hence Jade Suites LLC cannot sue the land owner in its capacity as a Foreign Company*
- (D) *Once the registration process has started, the company is deemed to be incorporated as a foreign company and hence Jade Suites LLC can sue the land owner* **(2 Marks)**

15. *Any instrument in the form of depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts, is called as:*

- (A) *American Depository Receipt*
- (B) *Global Depository Receipt*
- (C) *European Depository Receipt*
- (D) *Indian Depository Receipt* **(2 Marks)**

Answer Key

MCQ. No.	Correct Answer
1	C
2	B
3	C
4	D
5	D
6	B
7	D
8	D
9	D
10	A
11	D
12	B
13	D
14	C
15	D

PART – II: Descriptive Questions

Question No. **1** is compulsory.

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

Working notes should form part of the answer.

Question 1

(a) Amrish after completing his post-graduate degree in mechanical engineering from the United Kingdom returned back to India. Although he got a good placement in a UK based company but he thought to build his own business empire in India. Amrish belongs to Barmer district (Rajasthan) where his parents have agricultural land of 20 acres. He planned to manufacture commercial drones for the use of agricultural harvesting and assist in supply chain process. For this purpose, he planned to incorporate a private limited company having the following persons as the first subscribers to the Memorandum and Articles of Association:

- (i) Amrish (himself)
- (ii) Robert (He is a college friend of Amrish. He is a Citizen of UK. He has technical expertise and in order to incorporate the company visited India on a valid Business Visa).
- (iii) Eliza (She is college friend of Amrish. She is a Citizen of Netherlands and has good business contacts in European Countries which will be immensely useful in marketing of the company's products).
- (iv) Goma Devi (Mother of Amrish, who is illiterate. She has recently sold part of her agricultural land and has received ₹ 15 crores, out of which she agreed to subscribe ₹ 5 crores in the share capital of the proposed company).
- (v) Goodwork Technologies LLP (A Limited Liability Partnership having the expertise in the field of remote sensing devices).
- (vi) Mohit Electronics Private Ltd. (A Private Limited Company having expertise in the field of providing Electronics and Electricals).

Amrish planned to have the Registered Office of the proposed company at Jaipur while the factory and works office shall be at the Barmer.

For incorporation of a company, an application for registration is to be filed with the Registrar. In the given case, the initial subscribers to the company consists of one illiterate person, two foreign nationals, one LLP and one Private Limited Company.

Discuss the procedure, how these persons shall subscribe to the Memorandum of Association and Articles of Association. (5 Marks)

- (b) *Sangeeta was appointed as Statutory Auditor of ABC Ltd. in the Annual General Meeting (AGM) of the shareholders held on 20th August, 2023. However, Sangeeta met with an accident on 23rd December, 2023 and died. The Board of Directors of the ABC Ltd. filled up the casual vacancy caused by the sudden death of Sangeeta and appointed Keshav as the Statutory Auditor. The next AGM of the Company was scheduled for 28th August, 2024 in which the Board of Directors recommended for appointment of Aashish as Statutory Auditors before the shareholders.*

Keshav objected for the appointment of Aashish and gave representation to the Company Secretary mentioning therein that his (Keshav) appointment was approved by the Board of Directors after the demise of Sangeeta thus can continue as Statutory Auditor of the Company till the conclusion of the next 6th Annual General Meeting and also threatened to report the matter to the Registrar and the NCLT.

Based on the above facts answer the followings:

- (i) *Explain the procedure to fill up the casual vacancy of the office of Statutory Auditor.*
 - (ii) *Whether the contention raised by Keshav is justified as per the provisions of the Companies Act, 2013?*
 - (iii) *What shall be your answer, if the casual vacancy in the office of the Statutory Auditor in the company was caused by resignation of Sangeeta? (5 Marks)*
- (c) *Mr. V is a person of Indian origin who had moved to USA along with his wife in the year 1998 and had been living there until 2024. He was holding joint bank accounts with his wife in USA since 1998. On the demise of his wife on 17th November, 2024, he had returned permanently to India on 24th November, 2024. He also inherited his wife's money after her death, which got transferred to his bank account in USA. After few days of his*

return to India, he has paid premium from his bank account in USA of his insurance policy, which he had taken when he was in USA. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether Mr. V is permitted to carry out the above transactions. (4 Marks)

Answer

(a) Procedure as to how the persons shall subscribe to the Memorandum of Association and Articles of Association

In terms of Section 7(1)(a) of the Companies Act, 2013 (the Act), an application for registration shall be filed with the Registrar of Companies, within whose jurisdiction the registered office of the company is proposed to be situated in Form SPICE+ (Simplified Proforma for incorporating company electronically) plus INC 32 along with the fee as provided under the Companies (Registration Offices and Fees) Rules, 2014 and Memorandum (e-MOU in Form No.INC-33) and Articles (e-AoA in Form No. INC-34) of the company duly signed by all the subscribers to the Memorandum as prescribed under by Rule 13 of the Companies (Incorporation) Rules, 2014.

S. No.	Particulars In the case of:	Legal Provision
1	Amrish	In terms of Rule 13(a), each subscriber (in the given case, Amrish) shall add his name, address, description & occupation, if any, in the presence of at least one witness who shall attest the signature, shall sign and add his name, address, description and occupation, if any.
2.	Robert	In terms of Rule 13(f), where subscriber to the Memorandum is a Foreign National residing outside India and visited India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.
3.	Eliza	In terms of Rule 13(e), where subscriber to the memorandum is a foreign national residing

		outside India his signatures and address on the Memorandum and Articles of Association and proof of identity shall be notarized by a Notary (Public) with a certificate. Since Eliza is a foreign national residing outside India, her signature and address on the Memorandum and Articles of Association and proof of identity shall be notarized by a Notary (Public) with a Certificate. Rule 13(e) further provides that if a person residing in a Country outside the Common Wealth or which is not a party to the Hague Apostille Convention, 1961, the Certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer. <u>Note:</u> In the given case, Netherlands is a Country outside the Common Wealth hence, the Certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.
4.	Goma Devi	In terms of Rule 13(b) since Goma Devi is an illiterate person, she shall affix her thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by her.
5.	Goodwork Technologies LLP	In terms of Rule 13(d), where the subscriber is a Limited Liability Partnership, it shall be signed by a Partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership.

6.	Mohit Electronics Private Limited	In terms of Rule 13(c), where the subscriber is a body corporate, the Memorandum and Articles of Association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors.
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(b) (i) Procedure to fill up the casual vacancy of the office of the Statutory Auditor

Section 139(8) of the Companies Act, 2013 (the Act) describes the procedure for filling up the vacant position of the office of Statutory Auditor caused by a casual vacancy.

Accordingly, in case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, the Board of directors may fill any casual vacancy in the office of an auditor within 30 days. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Further, in terms of Section 139(11) of the Act, where a Company is required to constitute an Audit Committee under Section 177 of the Act, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

(ii) Whether the contention raised by Keshav is justified?

As per the above provision [Section 139(1) of the Act], Keshav (auditor appointed in a casual vacancy) can hold office until the conclusion of the next annual general meeting i.e. 28th August, 2024. Thus, the company can validly appoint Aashish as Statutory Auditors in the AGM held on 28th August, 2024. Hence, the contention raised by Keshav is not justified. Further, in this AGM, the Board of Directors of ABC Ltd. have already recommended to the shareholders for the appointment of Aashish as the new Statutory Auditor.

(iii) If the casual vacancy in the office of the Statutory Auditor in the company was caused by resignation of Sangeeta.

As per Section 139(8)(i) of the Act, where the casual vacancy is caused by the resignation of an auditor, such appointment 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.

If the casual vacancy in the office of auditor (Sangeeta) was caused by resignation of Sangeeta, the appointment of Keshav shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and the tenure of such new auditor shall be till the conclusion of the next AGM.

- (c)** As per Section 2(v) of the Foreign Exchange Management Act, 1999, "Person Resident in India" includes 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 come to or stays in India, in either case, otherwise than for any purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

As per provisions of the Foreign Exchange Management Act, 1999, 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.

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th January, 2014 has issued a clarification on Section 6(4) of the Foreign Exchange Management Act, 1999. This circular clarifies that Section 6(4) of the Act covers the following transactions:

1. Foreign currency accounts opened and maintained by such a person when he was resident outside India.
2. Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.

In the given question Mr. V has permanently returned to India on 24th November, 2024. Hence, he will be treated as a person resident in India from 24th November, 2024.

According to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident in India is permitted to maintain his foreign currency accounts and take insurance policy from an insurance company outside India.

Based on the above provisions, we can conclude that Mr. V who is residing in India since 2024, is now, a person resident in India and he is permitted to hold his bank account in USA and also pay for his insurance policy from that account.

ALTERNATE ANSWER:

According to the Section 6(4) of the Foreign Exchange Management Act, 1999, 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.

The RBI vide A.P. (DIR Series) Circular No.90 dated 9th January, 2014 has issued a clarification on Section 6(4) of the FEMA Act, 1999. This circular clarifies that section 6(4) of the Act covers the following transaction:

In terms of Section 6 (4) (iv) of FEMA, 1999, a person resident in India can freely utilize 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 fresh investments abroad without approval of the Reserve Bank of India, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of the funds forming part of eligible assets held by them and the transactions is not in contravention to the extant of FEMA provisions.

V has inherited money from his wife, who was a person resident outside India. V has been a resident in India since 24th November, 2024, as he had permanently returned to India from abroad. Thus, amounts in his foreign bank accounts are classified as eligible assets under the FEMA.

Therefore, under Section 6(4) of the FEMA, 1999 and vide the above RBI circular, 'V' can pay the insurance premium from his bank account in the USA for his insurance policy taken in the USA, as taking an insurance policy is a permitted transaction under Schedule I of the Foreign Exchange Management (Permissible Capital Account Transactions) regulations, 2000. So, by that account, paying a premium is also a permissible transaction.

Question 2

(a) Referring to the provisions of the Companies Act, 2013, state whether the following amounts received by the company constitute deposit or not:

- (i) IQ Books Limited received share application money of ₹ 50 crore from investors on 8th December, 2024. As the issue was under subscribed, the company refunded the amount to the investors on 20th February, 2025.
- (ii) Suraj, Raj and Tejas are the promoters of Precious Jewellers Limited. They borrowed a sum of ₹ 200 crore from ABC Bank Limited for its working capital purpose. The Bank imposed a stipulation that the promoters should contribute at least 20% of the amount borrowed. Hence, Suraj brought in ₹ 10 crore, Raj brought in ₹ 15 crore and Mr. K, father of Tejas brought in ₹ 15 crore.
- (iii) Pretty Cosmetics Limited issued non-convertible debentures for ₹ 125 crore and listed it on a recognized stock exchange adhering to SEBI rules and regulations. The company created a charge on its assets in favour of the debenture holders and duly registered the charge.

(5 Marks)

(b) Spark Services Limited issued a prospectus inviting public offer of securities on 18th June, 2024. The prospectus mentioned that Mr. T is one of the Directors of the Company. Mr. T is a famous social worker who helps in educating the poor children in Rajasthan. The prospectus also mentioned that a certain percentage of funds raised will be utilized towards that community service.

Mr. C was impressed by these statements and subscribed to the shares of the company. He was allotted 1000 shares of the company. He subsequently sold 250 shares to Mr. D. On 15th December, 2024, he came to

know that Mr. T was not a director and the company never had any intention of doing community service.

Mr. C and Mr. D want to rescind the contract. Referring to the provisions of the Companies Act, 2013, examine whether Mr. C and Mr. D can rescind the contract. **(5 Marks)**

- (c) *Purva Buildcon Ltd. (PBL) is a public company having two subsidiary companies namely Arihant Cements Ltd. (ACL) and Siddharth Bricks Ltd. (SBL). Purva is a Chief Financial Officer of PBL. Ashish and Mrinal, who were the CFO's of ACL and SBL resigned from their respective companies and Purva was offered to take charge of the office of CFO in ACL and SBL, which she accepted.*

Whether Purva can be designated as CFO simultaneously in two subsidiaries (i.e. in SBL and ACL) besides being CFO of PBL? Examine the matter with reference to the provisions contained in the Companies Act, 2013 as well as in the General Clauses Act, 1897. **(4 Marks)**

Answer

- (a) (i) As per sub- clause vii of Rule 2 (1) (c) of Companies (Acceptance of Deposits) Rules, 2014:

- (i) Any amount received and held towards subscription to any securities (including share application money or advance towards allotment of securities, pending allotment), so long as such amount is appropriated only against the amount due on allotment of the securities applied for.

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

In the light of the facts of the question and provisions of Law:

- IQ Books Limited received the share application money on 8th December, 2024 and refunded the same on 20th February, 2025.

Therefore, IQ Books Limited has kept the money for (24+31+19) 74 days with them which is less than (60 days + 15 days) 75 days to be considered the money as deposits.

Hence, 50 crore received by IQ Books Limited will not be considered as deposit as it was refunded within the prescribed time limit.

- (ii) As per sub-clause (xiii) of Rule 2 (1) (c) of Companies (Acceptance of Deposits) Rules, 2014, 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.

In the given question, the amount of 40 crore brought in by Suraj (Rs. 10 crore), Raj (Rs. 15 crore) and Tejas (₹ 15 crore through his father Mr. K), will not be treated as deposit as this amount brought by the promoters of Precious Jewellers Limited fulfill all the conditions as prescribed by the Act.

- (iii) As per sub-clause (ixa) of Rule 2(1)(c) of companies (Acceptance of Deposits) Rule, 2014, any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognized stock exchange as per applicable regulations made by Securities and Exchange Board of India, will not be treated as deposit.

In the given question, the amount of ₹ 125 crore raised by Pretty Cosmetics Limited will be treated as deposit as the company has created a charge on its assets in favour of the debenture holders.

- (b) As per Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any

inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447 of the Companies Act, 2013.

Right of Rescission

A person who has purchased shares from the company on the basis of the prospectus containing untrue and misleading statement of material facts is entitled to apply to the court for the rescission of the contract, under the relevant provisions of the Indian Contract Act 1872.

Exceptions - When right of rescission is not available?

As per the Contract Act, 1872, right to rescind allotment of shares will not be available to the subsequent purchasers of shares from the market.

In the given question, Mr. C subscribed to 1,000 shares of Spark Services Limited (on the basis of a prospectus which provided false statements related to Mr. T being one of the directors and that the company intended to utilize certain raised funds towards community service). Mr. D purchased 250 shares from Mr. C (i.e. he did not purchase shares on the basis of the prospectus containing untrue and misleading statement).

In the light of the above provisions Mr. C can rescind the contract as he purchased shares on the basis of the false statements in prospectus. However, Mr. D cannot rescind the contract.

(c) Provisions under the Companies Act, 2013

Chief Financial Officer (CFO) comes within the definition of Key Managerial Personnel (KMP) as defined in Section 2(51) read with Section 203(1) of the Companies Act, 2013.

Section 203(3) of the Companies Act, 2013 provides that Whole Time Key Managerial Personnel shall not hold office in more than one company except in its subsidiary company at the same time.

Provisions under the General Clauses Act, 1897

Section 13(2) of the General Clauses Act, 1897 provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa.

With respect to the issue that whether a Whole Time KMP of a holding company be appointed in more than one subsidiary company or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context.

Hence, Purva, the CFO (Whole Time Key Managerial Personnel) may hold office in more than one subsidiary company (i.e. ACL and SBL) as per the present law.

Question 3

(a) Comment on the following:

(i) Disclosure required to be made on the face of the Prospectus.

(ii) Conditions in regard to Experts' Statement.

(iii) Date of publication of prospectus.

(5 Marks)

(b) *Vital Pharmacy Limited is engaged in the manufacturing of medicines to cure skin diseases. It has established a unit in Germany. It registered few patents in Germany and raised funds by creating a charge on its stock in Germany and the patent rights. The company registered the charge created on its stock but did not register the charge created on the patent rights.*

The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the patents obtained outside India and also as they are intangible in nature.

Referring to the provisions of the Companies Act, 2013, examine the validity of the company's claim.

OR

(b) *What do you mean by Floating Charge and when it converts into a Fixed Charge?*

(5 Marks)

(c) *'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.*

(4 Marks)

Answer**(a) (i) Disclosure on the face of Prospectus [Section 26(6)]**

The prospectus issued as per Section 26(1) of the Companies Act, 2013 (the Act) shall, on the face of it, state/specify:

- a. That a copy has been delivered for filing to the Registrar
- b. Documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(ii) Conditions in regard to Experts' Statement [Section 26(5)]

A prospectus issued under Section 26(1) of the Act shall not include a statement purporting to be made by an expert, if any of following condition met:

- a. If he is engaged or interested in the formation or promotion or management of the company, or
- b. If the expert has not given written consent to the issue of the prospectus, or
- c. If he has withdrawn the consent before the delivery of a copy of the prospectus to the Registrar for filing.

A statement to that effect (non-existence of conditions, if expert's statement is included) shall also be included in the prospectus.

(iii) Date of Publication of Prospectus [Explanation to Sub-Section 3]

The date indicated in the prospectus shall be deemed to be the date of its publication.

(b) Registration by the Company creating a Charge

According to Section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation.

In the given question, Vital Pharmacy has raised funds by creating charge on its stock and patent rights in Germany. As per the provisions of the Companies Act, 2013, the company is required to register charge on its tangible as well as intangible assets, and situated in or outside India. However, in the given question, the company has registered charge on its stock but not on the patents (being outside India and intangible in nature).

In the light of the provisions of the Act and facts of the question, the contention of the company is incorrect, as it is the duty of the company to register the charge on its tangible as well as intangible assets, and situated in or outside India.

OR

(b) Floating Charge

A 'Floating Charge' is created on assets or a class of assets which are of fluctuating or changing in nature- like raw material, stock-in-trade, debtors, etc. It is a charge upon assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale. Thus, a floating charge is a charge that floats above ever-changing assets.

Conversion - 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.

- (c) ***Noscitur a Sociis*** means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is the meaning of the more general word being restricted to a sense analogous to that of the less general.

Examples of the principal of *Noscitur a Sociis* are as follows:

Fresh orange juice is not a fruit juice

While dealing with a Purchase Tax Act, which used the expression "manufactured beverages including fruit-juices and bottled waters and syrups".

It was held that the description 'fruit juices' as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (*Commissioners. v. Savoy Hotel*, (1966) 2 All. E.R. 299)

Private Dispensary of a doctor is not a commercial establishment

In dealing with the definition of commercial establishment in Section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, "commercial establishment means an establishment which carries on any business, trade or profession", the word 'profession' was construed with the associated words 'businesses and 'trade' and it was held that a private dispensary of a doctor was not within the definition. (*Dr. Devendra M. Surti v. State of Gujrat*, A.I.R. 1969 SC 63).

Question 4

- (a) XYZ Ltd., uses an Accounting Software for recording its financial transactions.

The statutory auditor of the company while auditing finds the following issues:

Some journal entries were altered without creating edit logs for all such changes.

The audit trail feature was disabled for certain modules (e.g., inventory adjustments, inter-company transactions).

Keeping in view of the above issue, advice the company on the followings:

- (i) *Audit trail and Edit Log requirements*
- (ii) *The back-up of books of accounts.* **(5 Marks)**
- (b) *Sun Roofings LLP has 6 partners. Mr. K, a partner is in-charge for the marketing division of the firm. He is literally the face of the firm and due to his acumen the business was doing very well. Mr. W is one of the senior most partner and a major investor in the firm. Mr. K met with a sudden demise. The LLP however continued its operations without dissolving the LLP. The firm incurred huge losses after his death and Mr. K's share in the firm was also utilised to repay the debts.*
- Mr. W transferred his share to his son M who has previous experience in marketing. M wanted to take active part in the business but the remaining partners did not allow him. Referring to the provisions of the Limited Liability Partnership Act, 2008 state whether;*
- (i) *Mr. K's share can be used to repay the firm's debts after his death*
- (ii) *The remaining partners of Sun Roofings can forbid M to take part in the business.* **(5 Marks)**
- (c) *Whether Illustrations will have effect of modifying the language of the section in connection with Interpretation of Statutes? Explain with the help of an example* **(4 Marks)**

Answer

- (a) The second proviso to Section 128(1) of the Companies Act, 2013 allows company to keep books of account or other relevant papers in electronic mode as per manner specified in Rule 3 of the Companies (Accounts) Rules, 2014.

Rule 3(1) states the books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times, so as to be usable for subsequent reference.

(i) Audit Trail and Edit Log [Proviso to Rule 3(1)]

In order to ensure audit trail, in case of company which uses accounting software for maintaining its books of account, the proviso to Rule 3(1) of the Companies (Accounts) Rules, 2014 requires that:

- (1) For the financial year commencing on or after the 1st day of April, 2023,

- (2) Every such company (which uses accounting software) shall use only such accounting software,
- (3) Which has a feature of recording audit trail of each and every transaction,
- (4) Creating an edit log of each change made in books of account along with the date when such changes were made and
- (5) Ensuring that the audit trail cannot be disabled.

Further, Sub-rule 5 requires there shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

Advice to the Company:

XYZ Ltd. has not complied with the Audit Trail and Edit Log requirements of the Companies Act, 2013 since the journal entries were altered without creating edit logs and audit trail feature was also partially disabled.

Therefore, XYZ Ltd. should ensure compliance with the above provisions by enabling edit log features for all entries linked to its creation and alteration, and enabling the audit trail feature for all modules.

(ii) The back-up of books of accounts

Proviso to sub-rule 5 of Rule 3 requires the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Hence, the issue raised by the statutory auditor of XYZ Ltd. with respect to mandatory requirement of maintaining the audit trail and edit log requirement, and with respect to maintenance of the backup of books of accounts is correct.

- (b) (i) As per Section 29(2) of the Limited Liability Partnership Act, 2008, where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not by itself make his legal representative or his estate liable for any act of the LLP done after his death.

In the instant case, Mr. K's share cannot be used to repay the firm's debts after his death as the firm continued its operations after his death without dissolving the firm and the losses were incurred after his death.

- (ii) As per Section 42 of the Limited Liability Partnership Act, 2008,
- (1) 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.
 - (2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
 - (3) 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 instant case, Mr. W can transfer his share in the limited liability partnership to his son, however, transfer of share does not, by itself, entitle M to participate in the management or conduct of the activities of the firm. Hence, the remaining partners of Sun Roofings LLP can forbid M to take part in the business.

(c) Illustrations cannot have the effect of modifying the language of the Section and can neither curtail nor expand the ambit of the Section

Many Sections of an Act have illustrations appended to them. These illustrations follow the text of the sections and, therefore, do not form a

part of the sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

Example: Section 73 of the Indian Contract Act, 1872 does not permit the award of interest as damages for mere detention of debt. Here, the Privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that an illustration cannot have the effect of modifying the language of the section which alone forms the enactment.

Question 5

- (a) *Write down functions and duties of the National Financial Reporting Authority.* **(5 Marks)**
- (b) *Write down any five points on the distinction between LLP and Limited Liability Company.* **(5 Marks)**
- (c) *Dream Builders Limited was engaged in the activity of building and selling budget friendly apartments. It recently started a new project at Noida. Pending approval, the builders started the construction work. On verification of documents, the Corporation of Noida refused to sanction the permission and the Assistant Commissioner Mr. S issued a demolition order, signed by him under his authority.*

The builders filed an appeal at the court and stayed the demolition. After 6 months of court trials, the verdict was announced in favour of the Corporation of Noida. Mr. G, the present Assistant Commissioner initiated the demolition process.

The builders argued that the order was passed by Mr. S and since he is no longer in the authority, the order stands cancelled and Mr. G cannot demolish the construction.

Referring to the provisions of the General Clauses Act, 1897, determine the validity of the claim of the builders. **(4 Marks)**

Answer**(a) Functions and Duties of National Financial Reporting Authority [NFRA]**

Section 132(1A) of the Companies Act, 2013, provides that National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

Further Section 132(2) read with rule 4, 6 to 9 of the *National Financial Reporting Authority Rules, 2018* lays down the functions and duties that NFRA shall perform, namely:

The Authority shall protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

Without prejudice to the generality, the Authority in particular shall:

- (a) Maintain details of particulars of auditors appointed in the companies and bodies corporate governed by NFRA;
- (b) Recommend accounting standards and auditing standards for approval by the Central Government;
- (c) Monitor and enforce compliance with accounting standards and auditing standards;
- (d) Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;
- (e) Promote awareness in relation to the compliance of accounting standards and auditing standards;
- (f) Co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and
- (g) Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

(b) Distinction Between LLP and Company

	Basis	LLP	Company
1.	Regulating Act	The LLP Act, 2008	The Companies Act, 2013
2.	Members/ Partners	The persons who contribute to LLP are known as partners of the LLP	The persons who invest the money in the shares of the company are known as members of the company
3.	Name	Name of the LLP to contain the word "Limited Liability Partnership" or "LLP" as suffix	Name of the public company to contain the word "Limited" and Pvt. Co. to contain the word "Private Limited" as suffix
4.	No. of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees	Private company: Minimum - 2 members Maximum 200 members Public company: Minimum - 7 members Maximum - No such limit on the members. Members can be organizations, trusts, another business form or individuals
5.	Liability of members/ partners	Liability of each partner is limited to the extent of agreed	Liability of a member is limited to the amount unpaid on

		contribution except in case of intention is fraud	the shares held by them
6.	Management	The business of the firm is managed by the partners including the designated partners authorized in the agreement	The affairs of the company are managed by board of directors elected by the shareholders
7.	Minimum number of directors/designated partners	Minimum 2 designated partners	Pvt. Co. – 2 directors Public co. – 3 directors

- (c) As per Section 17 of the General Clauses Act, 1897, in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

As per Section 18 of the General Clauses Act, 1897, in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

In other words, the General Clauses Act, 1897, provides general definitions and rules for interpreting laws, particularly Central Acts and Regulations. Section 18 specifically deals with the continuity of laws when a functionary is replaced. It clarifies that when a law refers to a specific official, it's not limited to that individual but extends to their successors.

This means that if a law grants power to a particular officer, that power also extends to their successor, unless explicitly stated otherwise. A successor in office can generally continue a case under the General Clauses Act, and this is also related to the doctrine of merger.

As per Section 18, the power to appoint includes the power to appoint ex-officio, meaning the authority is attached to the office, not the individual. Further, under section 17, official acts continue to remain valid despite changes in officeholders.

As per the facts of the question and a combined reading of Sections 17 and 18 of the General Clauses Act, 1897, Mr. G, in his capacity as the current Assistant Commissioner, is legally competent to order the demolition of the construction. This is because the original order was issued by Mr. S, the former Assistant Commissioner, in his official capacity, and the authority to act continues with the office, not the individual.

Hence, the claim of Dream Builders Limited is not valid.

Question 6

- (a) *DNC Hydro Limited, obtained a loan of ₹ 3,000 crores from SPM Bank in April, 2021 to finance its hydropower generation project. To secure the loan, the company created a charge on its assets including land, plant and machinery. The charge was registered with the ROC in form CHG-1.*

In September, 2024, DNC Hydro Limited fully repaid the loan and SPM Bank issued no dues certificate to the company.

However, due to internal compliance oversight, DNC Hydro Limited failed to file form CHG-4 within the 30 days prescribed limit under Section 82 of the Companies Act, 2013.

In January, 2025, RTS Bank approved a loan for ₹ 1,000 crore to DNC Hydro Limited for acquiring new plant and machinery.

During the due diligence, RTS Bank discovered that the old charge was still active in the ROC records, thereby creating problems for the disbursement of the new loan.

As a Financial Advisor of the company, advise what are the legal and procedural steps DNC Hydro Limited should follow to remove the old charge from ROC records.

(5 Marks)

- (b) *ABC Inc., a company based in USA, develops cyber security software and sells it to its Indian clients.*

ABC Inc. has entered into service agreement with PQR Private Limited, a company incorporated in India. PQR Private Limited provides support to the Indian customers for the software installation and after sale services. PQR Private Limited also holds 50% of shares of ABC Inc.

Explain whether ABC Inc. is required to comply with the provisions of chapter XXII of the Companies Act, 2013. **(5 Marks)**

- (c) *Define "Foreign Exchange" and "Foreign Security" as per the provisions of the Foreign Exchange Management Act, 1999.* **(4 Marks)**

Answer

- (a) 1. **Intimation regarding Satisfaction of Charge:** Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended Period of intimation: Proviso to Section 82(1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

2. **Notice to the Holder of Charge by the Registrar:** On receipt of intimation, the Registrar shall cause a notice to be sent to the holder of the charge calling upon him to show cause within such time as specified in the notice but not exceeding 14 days, as to why payment or satisfaction in full should not be recorded.

If no cause is shown by the charge-holder, the Registrar shall order entering of a memorandum of satisfaction in the register of charges kept by him and accordingly, he shall inform the company of having done so.

However, no notice is required to be sent, in case the intimation to the Registrar in this regard is in the specified form [CHG - 4] and signed by the holder of charge.

If any cause is shown by the charge-holder, the Registrar shall record a note to that effect in the register of charges and inform the company.

3. **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 in Form No. CHG-5.

In the instant case, DNC Hydro Limited has to follow the above legal and procedural steps to remove the old charge from ROC records.

Alternate Conclusion:

As the SPM bank has already issued a no dues certificate, DNC Hydro Limited should file the form CHG-4 within the extended period of limitation i.e. within 30 to 300 days. Accordingly, the Registrar may, on an application by the company allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed fees. The Registrar shall not cause any notice to be sent to SPM Bank in this case as NOC has been issued by it and just register the satisfaction after payment of prescribed fees.

- (b) As per Section 2(42) of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which-
- (a) has 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.

Applicability of Act to Foreign Companies: Sections 380 to 386 (both inclusive) and Sections 392 and 393 of the Companies Act, 2013 (the Act) shall apply to all foreign companies. It implies that all companies which falls within the definition of foreign company as per Section 2(42), shall comply with the provisions of this Chapter.

Requirement of holding of paid-up share capital:

As per Section 379(2) of the Act, 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 such other prescribed provisions of the Act with regard to the business carried on by it in India as if it were a company incorporated in India.

In the instant case, ABC Inc. will also be required to comply with the provisions of Chapter XXII as 50% of the shares of ABC Inc. are held by PQR Private Limited, a company incorporated in India.

(c) Definition of 'Foreign Exchange'

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.

Definition of 'Foreign Security'

According to Section 2(o) of the Foreign Exchange Management Act, 1999, Foreign Security means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.

PAPER – 2: CORPORATE AND OTHER LAWS

PART I MCQs

Case Scenario I

JK Logistics Ltd., is one of the leading companies in the logistics industry. Five years ago, 75% equity shares of JK Logistics Ltd., were acquired by RK Logistics Ltd. RK Logistics Ltd., has a presence in Haryana, Punjab and Rajasthan and is mainly into transporting of agricultural produce. As timely transportation of agricultural produce is of strategically importance, the state governments of the above three states holds stake in RK Logistics Ltd. The State Government's current stakes are as follows:

State of Haryana: 19%

State of Rajasthan: 20%

State of Punjab: 18%

On 29th September, 2023, just after the conclusion of the AGM, Mr. Rohan, the auditor of JK Logistics Ltd., suffered a stroke and in order to reduce work load, resigned as the auditor of the company but unfortunately, he forgot to inform the concerned authorities about his resignation. It is important to note that auditor's (i.e. Mr. Rohan) annual remuneration was ₹ 5 lakhs.

The company on the other hand, appointed AG & Associates as their auditors after completing all the statutory formalities. Mr. Avinash, who is one of the partners of the audit firm, had borrowed a sum of ₹ 3.5 lakhs from RK Logistics Ltd. and has dues of ₹ 1.49 lakhs towards use of logistic services of the company. Both the sum borrowed and the cost of services taken are not yet paid by Mr. Avinash. Mr. Avinash is not signing the financials of JK Logistics Ltd.

Based on the facts given in above case scenario and by applying the relevant provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 1 to Q. No. 3)

- 1. To whom should have Mr. Rohan informed about his resignation? What could be the possible consequence for his non-compliance?*

- (A) He should have informed the registrar and JK Logistics Ltd. As a consequence of his failure, he is liable to a penalty not exceeding 5 lakhs.
- (B) He should have informed the registrar. As a consequence of his failure, he is liable to a penalty not exceeding ₹50,000.
- (C) He should have informed JK Logistics Ltd. as well as the registrar and C&AG. As a consequence of his failure, he is liable to a penalty not exceeding ₹5 lakhs.
- (D) He should have informed JK Logistics Ltd. as well as the registrar and C&AG. As a consequence of his failure, he is liable to a penalty not exceeding ₹50,000,
2. Based on the shareholding pattern of JK Logistics Ltd. and RK Logistics Ltd., select the correct answer as to the classification of these companies:
- (A) RK Logistics Ltd. is a government company while JK Logistics Ltd. is a non-government company.
- (B) RK Logistics Ltd. is a non-government company while JK Logistics Ltd. is a government company.
- (C) RK Logistics Ltd. and JK Logistics Ltd. both are government companies.
- (D) RK Logistics Ltd. and JK Logistics Ltd. both are non-government companies.
3. With respect to the act carried out by Mr. Avinash, the partner of the new audit firm, what can you infer about the appointment of AG & Associates, as auditors of JK Logistics Ltd.?
- (A) It is valid since the in-debtiness is within the prescribed limit.
- (B) It is not valid since the in-debtiness exceeds the prescribed limit of ₹1 lakh.
- (C) It is valid since Mr. Avinash is not signing the financials of JK Logistics Ltd.
- (D) It is valid since the in-debtiness is not with JK Logistics Ltd.

Case Scenario II

The notice for conducting the annual general meeting of XYZ Limited was sent on 3rd August, 2024 to all the stakeholders, who were eligible to receive the notice. The said notice specified that the Annual General Meeting (AGM) will be held on 5th September, 2024, But, due to want of quorum, said AGM was adjourned to 12th September 2024. In the said meeting held on the 12th September, 2024, the financial statements of the company could not be adopted due to some unavoidable circumstances. Since the financial statements of the company could not be adopted in the above meeting, the directors did not file the financial statements relating to financial year 2023-2024 with the Registrar on the plea that the financial statements of the Company were not adopted in a general meeting and therefore there is no necessity to file any financial statement with the Registrar till the same are not adopted. On 2nd December, 2024, an extra-ordinary general meeting was conducted, in which the financial statements of the company were adopted. Since, the Company Secretary was on a business tour and was absent from India from 10th December, 2024 to 2nd January, 2025, the adopted financial statements were filed with the Registrar only on 3rd January, 2025.

Based on the facts given in above case scenario and referring to the applicable provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 4 to Q. No. 7)

4. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the annual general meeting which could not be held on 5th September, 2024?*
 - (A) *XYZ Limited should inform the Registrar the fact that the AGM could not be held for want of quorum and therefore the financial statements will be filed with the Registrar only when they are adopted in a general meeting.*
 - (B) *XYZ Limited should inform the Registrar the fact that the AGM could not be held for want of quorum, but the un-adopted financial statements will be filed with the Registrar within a period of 30 days from 5th September, 2024.*
 - (C) *There is no obligation on the part of XYZ Limited to inform the fact to the Registrar that the AGM could not be held for want of quorum, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 5th September, 2024.*

- (D) *There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM could not be held for want of quorum. Also, the un-adopted financial statements will not be required to be filed with the Registrar in this situation.*
5. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the adjourned annual general meeting held on 12th September, 2024?*
- (A) *XYZ Limited should inform the Registrar the fact that the AGM was held on 12th September, 2024 and since the financial statements were not adopted, the financial statements will not be required to be filed with the Registrar.*
- (B) *XYZ Limited is not required to inform the Registrar the fact that the AGM was held on 12th September, 2024 and since the financial statements were not adopted, the financial statements will also not be required to be filed with the Registrar.*
- (C) *There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM was held on 12th September, 2024, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 12th September, 2024, which will be considered by the Registrar as the provisional financial statements.*
- (D) *There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM was held on 12th September, 2024, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 12th September, 2024, which will be considered by the Registrar as the financial statements.*
6. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the extra ordinary general meeting held on 2nd December, 2024?*
- (A) *XYZ Limited should inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024 and the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024.*

- (B) XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024 and the previously filed un-adopted financial statements, if any, will be treated as provisional financial statements.
- (C) XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, and the previously filed un-adopted financial statements if any, will be returned back to the company.
- (D) XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024 and the previously filed un-adopted financial statements, if any, will be considered as if no financial statements were filed earlier.
7. In the above case scenario, in case XYZ Limited could not convene the annual general meeting till 2nd December, 2024 and the meeting held on that date was the annual general meeting, what will be the obligation of the company with regard to filing of the financial statements with the Registrar, before conducting the said meeting?
- (A) Since the annual general meeting was not held, XYZ Limited was not required to file any financial statement with the Registrar.
- (B) Since the annual general meeting was not held, XYZ Limited was not required to file any financial statement with the Registrar, but the statement of facts and reasons for not holding the annual general meeting should have been filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.

- (C) *Even the annual general meeting was not held, XYZ Limited was required to file the financial statements only with the Registrar within thirty days of the last date before which the annual general meeting should have been held.*
- (D) *Even the annual general meeting was not held, XYZ Limited was required to file the financial statements along with the statement of facts and reasons for not holding the annual general meeting should have been filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.*

Case Scenario III

Natrajan Cleaners Limited (NCL), a corporate unlisted company, is a contract manufacturing company incorporated in 2017 with a primary objective of manufacturing a full range of residential, commercial and portable washing machine for established brands in India and other neighbouring countries. NCL is a family-owned company having its registered office in Bangalore. The company has its marketing office in all the major cities including port cities. All the members, as was the usual practice, were kept informed from time to time regarding all the important matters and issues relating to the company without fail by the CFO cum Company Secretary Nirad.

Years passed. Size of the business and share capital of NCL substantially increased. NCL plans to go for expansion in its capacity, keeping in mind export market, which required about ₹ 25 crores. NCL started looking for various options for financing. One of the options considered was offer or invitation for subscription of equity through private placement. The Board identified a select group of 50 persons and issued private placement offer and applications after passing a special resolution at a general meeting and also after duly following the required procedure under the applicable corporate laws. Monies received on application were kept in a separate bank account with Canara Bank. However, for some reasons NCL could not allot the equity shares within a period of 60 days from the date of receipt of the application money. The private placement plan was effectively cancelled, duly following the required procedure. NCL later opted for bank loans to finance the expansion.

NCL is authorized by its articles of association to accept whole or any part of the amount of remaining unpaid calls from any member, although till date, no part of that amount has been called up. Yogesh, one of the shareholders deposited in

advance the remaining amount due on his shares without any calls made by NCL. NCL declared dividend during the year after such advance money was paid by Yogesh. Yogesh wanted to exercise his voting rights also in respect of call money paid in advance at the general meeting.

Bhisma Cleanser Private Limited (BCPL) has been holding 5% equity in NCL since February 2018. During the month of February 2022, NCL invested in 70% equity shares of BCPL.

Based on the facts given in above case scenario and referring to the applicable provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 8 to Q. No. 10).

8. *The Board of Directors of NCL wants to understand from Nirad the implications of 5% holding of BCPL.*
 - (A) *BCPL shall surrender its 5% equity holding to NCL immediately once it becomes the subsidiary of NCL.*
 - (B) *BCPL shall transfer its 5% equity holding to any nominees of NCL before it becomes the subsidiary of NCL.*
 - (C) *BCPL shall immediately transfer its 5% equity holding to any other legal person or entity before investment by NCL.*
 - (D) *BCPL may continue to hold 5% equity holding in NCL.*
9. *Yogesh, one of the shareholders deposits in advance the remaining amount due on his shares without any calls made by NCL. NCL declared dividend during the year.*
 - (A) *Yogesh is not entitled to any dividend in respect of call money paid in advance.*
 - (B) *Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by a Board Resolution.*
 - (C) *Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by an Ordinary Resolution in a general meeting.*
 - (D) *Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by Articles of Association.*

10. *With reference to the Board identified select group of 50 persons and issued private placement offer and applications duly following the required procedure under the corporate laws.*
- (A) Public at large is to be informed about such an issue through release of public advertisement through utilizing any media, marketing, distribution channels or agents.*
 - (B) A release of public advertisement in any local newspaper and one national newspaper informing private placement is sufficient.*
 - (C) No company issuing securities under private placement shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.*
 - (D) Informing the public at large through advertisement or otherwise is optional and the Board of Directors by passing a Board Resolution may decide the matter.*

Case Scenario IV

Aces High Builders Ltd. (AHBL) is Dehradun based public limited construction company engaged in the business of developing high-end flats and villas across prime locations in Uttarakhand, India. The company had procured land in the hills of Mussoorie in the year 2019. Since then, it has been engaged in the development of the above site thereby building a set of 12 villas and 75 flats. The builders have also tied-up with one of the U.S. based commission agent Mr. Cooper who would be promoting the above property amongst Non-Residents who would like to own their private accommodation in the above location. Mr. Cooper has successfully sealed a deal with a non-resident based in Las Vegas, U.S.A. for the purchase of one of the villas costing USD 600,000, for which he is to be paid a suitable commission on the above remitted amount.

The last year landslides and other geographical disruptions in the region during monsoon season has compelled the builders to obtain expert consultancy regarding shaping and curing of the land in and around the constructed site including designing the roads; power facilities in the region and other infrastructural backup so that the area can be made safe for living all around the year. Accurate Consultants Ltd. an U.S.A. based consultancy services company has been hired to provide such services. Negotiations are being carried regarding the consultancy fees to be charged by them.

AHBL has lately started another unit engaged in the manufacturing and export of mortar mixing machines. During the current year it has received a sale order for two such machines from Italy. The machines have been packed in containers and shipped via sea to the Italian customers. Such containers have reached the Italian port. The Detention charges to be paid by the sellers are well above the rate as prescribed by Director General of Shipping.

The company has also explored areas near Rishikesh for developing of farm houses. At the initial stage, it has selected a piece of land at the outskirts of the city for the above purpose. Since the development requires huge investments, it has issued advertisements regarding the same in electronic media which has a worldwide coverage. Mr. Tony, a man of Indian origin, having migrated to U.S.A. in 1977 and he is much influenced by the above advertisement and has contacted the company with an offer to invest USD 260,000 in the same with the condition that 50% of the payment shall be made by him immediately and the rest shall be paid only after the keys to the fully developed farm house has been handed over to him. The company has agreed to his terms and is currently inviting suggestions from its legal team regarding the various nuances and feasibility of the same.

Based upon the above case scenario, you are required to opt the correct answer w.r.t. the following questions (Q. No. 11 to Q. No. 13) in light of the applicable provisions of the FEMA, 1999:

- 11. Considering the provisions of the FEMA, 1999 decide upon the maximum amount of commission that can be paid to Mr. Cooper as well as Consultancy charges to Accurate Consultants Ltd. for which approval of RBI would not be required under the above Act.*
 - (A) USD 30000 and USD 10,000,000 respectively*
 - (B) USD 25000 and USD 1,000,000 respectively*
 - (C) USD 10000 and USD 1,00,000 respectively*
 - (D) USD 15000 and USD 10000 respectively*
- 12. Considering the provisions of the FEMA, 1999 decide upon the process of releasing the containers from Italian ports by the Indian company.*
 - (A) AHBL shall have to obtain prior permission of Ministry of Surface Transport (DG Shipping) for payment of the detention charges as it exceeds the rates as prescribed by Director General of Shipping.*

- (B) AHBL shall have to obtain prior permission of both Ministry of Surface Transport as well as Ministry of Finance, Department of Economic Affairs as the transaction involves payment of foreign exchange as detention charges.
- (C) AHBL shall have to obtain prior permission of Ministry of Finance, Department of Economic Affairs for payment of the detention charges as it exceeds the rates as prescribed by Director General of Shipping.
- (D) AHBL need not obtain permission from any government authorities in India as now the ship is at the Italian ports away from Indian Jurisdiction.
13. Considering the provisions of the FEMA, 1999 the possible suggestion that can be given by the legal team regarding investment of USD 260,000 by Mr. Tony in the Rishikesh farmhouse project.
- (A) Mr. Tony can very well invest USD 260,000 towards the farmhouse as being a person of Indian origin he is allowed to buy land in India.
- (B) Mr. Tony can very well invest but only up to USD 250,000 towards the farmhouse as being a person of Indian origin he is allowed to buy land in India.
- (C) Mr. Tony cannot invest USD 260,000 towards the farmhouse as being a non-resident.
- (D) Mr. Tony cannot invest USD 260,000 in instalments of 50%, but only after paying the full one-time amount.
14. Where after a partner's death the business is continued in the same Limited Liability Partnership name, the continued use of that name or of the deceased partner's name as a part thereof:
- (A) shall make his legal representative liable for any act of the limited liability partnership done after his death.
- (B) shall make his estate liable for any act of the limited liability partnership done after his death.
- (C) shall make his legal representative or his estate liable for any act of the limited liability partnership done after his death.
- (D) shall not by itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

15. *The General Clauses Act, 1897 is applicable to:*

- (A) *whole of India including the Union Territory of Jammu and Kashmir.*
- (B) *whole of India excluding the Union Territory of Jammu and Kashmir.*
- (C) *the Act does not define any "territorial extent" clause.*
- (D) *whole of India excluding the National Capital Region and other Union Territories.*

Answer Key

MCQ No.	Correct Option
1.	(D)
2.	(C)
3.	(A)
4.	(C)
5.	(C)
6.	(A) / (B)
7.	(D)
8.	(D)
9.	(A)
10.	(C)
11.	(A)
12.	(A)
13.	(C)
14.	(D)
15.	(C)

PART II

Question No. 1 is compulsory.

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

Question 1

(a) 1,00,000 Equity shares of ₹ 100 each were issued at a premium of ₹ 2 per share by PQR Limited after offer for the same was received from the shareholders in terms of the prospectus issued by the company on 1st April, 2022. The prospectus specified that the amount received from the issue will be exclusively used for manufacturing and distributing some life-saving drugs. In August 2024, the company after proper market survey found that there is ample demand for Artificial Intelligence based software and therefore decided to go forward for development of such type of software. They also wanted to divert a small amount for investment in the equity shares of a large successful company. Since there was surplus money from the above issue of equity shares, the Board of Directors passed two resolutions for the above purpose; the first for investing ₹ 60,00,000 for development of Artificial Intelligence based software and the second for investing ₹ 5,00,000 in the Equity Shares in X Limited, which is a listed company.

In order to avoid any unwarranted situation from the shareholders, the Directors called for an extra ordinary general meeting in which votes cast in favour of the proposal was in excess of the votes cast against it. Some shareholders objected to the above action of the Board on the following grounds:

- (i) that the resolution passed in the extra-ordinary general meeting was not proper since the required majority did not approve the same;
- (ii) that the prescribed details of the notice which was given to the shareholders should also have been published in newspapers (one in English and one in vernacular language), circulating in the city where the registered office of the company is situated indicating clearly the justification for such variation in the use of the funds; and
- (iii) that the resolution passed for investing 5,00,000 in the Equity Shares in X Limited is illegal.

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contentions of the shareholders are tenable.

- (b) *Sohan Lal was appointed as the statutory auditor of RST Ltd., a non-government company at the Annual General Meeting held on 30th September, 2023. He has resigned after two months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a multinational company.*

Explain how the new auditor will be appointed by RST Ltd. and the conditions to be complied with in this regard.

- (c) *Murari Lal, a person resident outside India, has invested in four residential immovable properties under construction in Kolkata. Each property is negotiated at ₹ 2 crore, with the companies owned by builders. This amount is to be paid in two instalments as 60% on immediate basis on booking and the balance on possession of the properties.*

The above transaction is done by the companies owned by builders through two brokers from USA on commission basis. Mr. Murari Lal as per the terms and conditions remitted 60% of the amount of all four immovable properties directly to the company.

Answer the following explaining the provisions of the Foreign Exchange Management Act (FEMA), 1999:

- (i) *Whether investment by Mr. Murari Lal and payment of commission on this transaction is permissible?*
- (ii) *How much maximum amount of commission can be paid to each broker without RBI approval?*

(Ignore the USD - Rupee Exchange Rate)

Answer

- (a) According to section 27(1) of the Companies Act, 2013 (the Act), the terms of a contract referred to in the prospectus or objects for which the prospectus has been issued can be varied, but only with the authority of the company given by it in a general meeting by way of a special resolution passed through Postal Ballot.

The first proviso to sub-section (1) requires that prescribed details of the notice which has been given to the shareholders are to be published in newspapers (one in English and one in vernacular language) circulating in the city where the registered office of the company is situated indicating clearly the justification for such variation.

The second proviso to sub-section (1) also prescribes that such company is not to use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

Section 27(2) of the Act provides that the dissenting shareholders (i.e. those who did not agree to the variation) are to be given an exit offer by promoters or controlling shareholders at such exit price and in such manner and conditions as may be specified by SEBI by making regulations for this purpose.

In the given question, PQR Limited has raised amount through issue of equity shares. It was specified that the amount so received will be used exclusively for manufacturing and distributing some life saving drugs. However, now the company wants to use the surplus money left from the mentioned issue of shares, for development of Artificial Intelligence software and for investing in Equity Shares of X Limited (a listed company).

As per facts of the question and the provisions of the Act:

The company called an extraordinary general meeting for the above proposals of using the surplus amount. In this meeting, votes cast in favor were in excess of votes cast against.

Section 27(1) requires that a special resolution be passed in case of variation of terms of objects for which the prospectus has been issued can be varied.

In view of the above provisions, the contentions of the shareholders are discussed as below:

- (i) In terms of the provisions of sub-section (1) of section 27 stated above, the first contention of the shareholders is tenable since the resolution passed in the extra ordinary general meeting was not proper as it was not passed by the required majority.

- (ii) In terms of the first proviso to sub-section (1) of section 27 stated above, the second contention of the shareholders is also tenable since the required publication was not made in the newspapers as mentioned in the above referred proviso.
- (iii) In terms of the second proviso to sub-section (1) of section 27 stated above, the third contention of the shareholders is also tenable since the Act prohibits the company to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

In the given case, X Ltd., is a listed company, hence PQR Ltd., cannot invest in the equity shares of X Ltd.

Hence, the resolution passed for investing ₹ 5,00,000 in the equity shares in X Limited is not valid.

(b) Filling Up Casual Vacancy [Section 139(8)]

Any vacancy arising in the office of the auditor due to any reason except on the expiry of his term is known as a casual vacancy.

As per section 139(8) of the Companies Act, 2013 (the Act), the Board of Directors (other than a Government Company) has power to fill casual vacancy in the office of the auditor within 30 days.

In case of casual vacancy due to the resignation of the auditor, such appointment shall be approved by the company by passing an ordinary resolution at a General Meeting convened within three months of the recommendation of the Board.

Any auditor so appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the Audit Committee, (if any). [Section 139(11)].

Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in Section 141

of the Act. The Company shall inform the auditor concerned of his or its appointment.

Compliances:

As per section 140(2) and (3) of the Act read with Rule 8 of Companies (Audit and Auditors) Rules, 2015, the resigning auditor shall file

Form ADT-3 with the company and the Registrar of Companies (ROC) along with valid reasons within 30 days of the date of resignation.

The company shall file a notice of appointment in Form ADT-1 with the ROC within fifteen days of the meeting in which the auditor is so appointed.

The new auditor appointed under Rule 3 shall submit a certificate that:

- (i) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under sections 139, 141, and other applicable provisions of the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (ii) A written consent to act as the auditor.
- (iii) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (iv) The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- (v) The new auditor must communicate with the resigning auditor to ensure there are no professional or ethical concerns.

Thus, the Statutory Auditor can be appointed as per the procedure mentioned above.

- (c) The investment in immovable properties in India by Mr. Murari Lal, a resident outside India, is a Capital Account Transaction which is permissible as per Schedule II of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 which permits Acquisition and Transfer of Immovable Property in India by a Person Resident Outside India.

According to Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more.

As per the facts of the question and mentioned provisions, the following are the answers to the questions asked:

- (i) Yes, the investment by Mr. Murari Lal and payment of commission on this transaction is permissible.
- (ii) Calculation of maximum commission that can be paid without the approval of RBI.

The maximum amount of commission that can be paid to each broker for each transaction, without RBI approval is, more of- USD 25,000 or ₹ 6 lakh [i.e. 5% of (60% of 2 crore)].

Thus, ₹ 6,00,000 can be paid to each broker as commission without taking any prior approval of the RBI.

Question 2

- (a) *Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL) a listed public limited company. The Board of Directors of Silk Segment Private Ltd. have collectively decided upon the proposal to grant loans of ₹ 15,00,000 and ₹ 20,00,000 to Mr. Sohan and Ms. Subarna respectively for the purchase of fully paid-up shares in Silk Segment Private Ltd.*

Mr. Sohan is the Deputy Marketing Manager of Silk Segment Private Ltd. with a monthly salary of ₹ 1,00,000; whereas Ms. Subarna, a qualified Chartered Accountant, is the Chief Financial Officer of Silk Segment Private Ltd. with a monthly salary of ₹ 2,00,000.

In view of provisions of the Companies Act, 2013, decide:

- (i) *Whether the proposed loans to Mr. Sohan as well as Ms. Subarna can be disbursed by the company keeping in view that Silk Segment is a private limited company?*

- (ii) Whether the answer would be different in case only 25% shares of SSPL are held by SBL?
- (b) The following are the extracts from the financial statements of BUI Private Limited, which is neither a start-up nor it is an associate or subsidiary company of any other company.

Particulars	Amount ₹
Authorised Capital: 10,00,000 Equity Shares of ₹ 100 each	10,00,00,000
Paid-up Share Capital: 8,00,000 Equity Shares of ₹ 100 each	8,00,00,000
Securities Premium Reserve Account	2,00,00,000
General Reserves	5,00,00,000
Term Loan from LMR Bank Limited	12,00,00,000
Cash Credit Loan (For Working Capital)	5,00,00,000

The company has never failed to file the Annual Return and Financial Statements with the Registrar. The company has already successfully repaid all the monies which were accepted earlier in the form of deposits along with due interest. Since the company was successful in implementation of its housing project by utilizing the money accepted in the form of deposits, the Board was interested to accepting deposits once more and take up another housing project in NOIDA since the members of the company were having sufficient surplus money which they wanted to invest in the company to start the project. However, their condition was that the same will be provided by them if the company accepts them in the form of deposits and the applicable provisions of the Companies Act, 2013 and Rules made thereunder are strictly complied with. But, the Board of Directors of BUI Private Limited were not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the said deposits, since the repayment was to be made out of the amount received from the customers who were going to book for the flats in the housing project. Two proposals came for review to the Board, out of which only one proposal was to be selected. The Board wanted you to advise them in choosing the appropriate deposit scheme.

Proposal 1 - Acceptance of Deposits of ₹ 20,00,00,000, to be repaid with interest @ 7% per annum;

Proposal 2 - Acceptance of Deposits of ₹ 14,00,00,000, to be repaid with interest @ 8% per annum.

Referring to the applicable provisions of the Companies Act, 2013, the Rules made thereunder and the notifications issued in this respect, advise the Board stating the justification in support of your advice.

- (c) *State what do you understand by the term 'document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as a document:*
- (i) *Power of Attorney*
 - (ii) *Cheque*

Answer

- (a) (i) According to section 2(71) of the Companies Act, 2013, (the Act) a Public Company means a company which—

- (a) is not a Private Company; and
- (b) has a minimum paid-up share capital as may be prescribed:

Provided that, a company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles.

As per section 2(51) of the Act, Key Managerial Personnel (KMP), in relation to a company, includes the Chief Financial Officer.

According to section 67(2) of the Companies Act, 2013, Public Company shall not give any financial assistance:

1. Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise.
2. For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per section 67(3) of the Act, a company may provide the financial assistance, in case of lending money by a company to its employees (other than its directors or key managerial personnel), not exceeding six-month salary of the employees to enable them to buy or

subscribe fully paid shares in the company or its holding company and to hold them by way of beneficial ownership.

In the given question, Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL). Thus, SSPL will also be deemed as a public company [by virtue of Section 2(71)].

Hence, considering the above provisions we can answer the following to the questions asked:

- (i) Mr. Sohan is the Deputy Marketing Manager of SSPL; hence loan may be provided to him upto the limit of his 6 months' salary i.e. ₹ 6,00,000. Thus, proposal to grant loan of ₹ 15,00,000 to Mr. Sohan for purchase of shares in SBL is not valid.

Ms. Subarna is a KMP (being the Chief Financial Officer of SSPL), hence, proposal to grant loan to her for purchase of shares in SBL is not valid.

- (ii) Section 67 of the Act shall not apply to private companies in whose share capital no other body corporate has invested any money. In case where Silk Block Ltd. (SBL) held only 25% shares of Silk Segment Private Ltd. (SSPL), the latter would not be termed as a subsidiary of the former and hence would not be a deemed public company. It will still be regarded as a private limited company. Further, SBL is holding shares in SSPL, thus SSPL will not fall in the exempted class of private companies and accordingly, the provision of section 67(3) of the Companies Act, 2013 shall apply.

In view of the above provisions, the answer would remain the same in case only 25% shares of SSPL are held by SBL.

(b) Exemption to certain Private Companies:

Notification No. GSR 464 (E) dated 5th June 2015, provided certain exemptions to Private Limited Companies relaxing the provisions of the Companies Act 2013 with respect to certain restrictions for acceptance of deposits.

The restrictions specified in the clauses (a) to (e) of sub-section (2) of section 73 with respect to certain restrictions for acceptance of deposits like issue of circular, filing the copy of such circular with the Registrar,

depositing of certain amount and certification as to no default committed shall not apply to a private company. They are as follows:

- (A) which accepts from its members monies not exceeding one hundred percent of the aggregate of the paid-up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:-
 - (a) which is not an associate or a subsidiary company of any other company;
 - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
 - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

In the present case, BUI Private Limited was not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the deposits.

Also, since BUI Limited does not satisfy the conditions given in clause (C) above, as its borrowings from banks is not less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, (i.e. $8 \text{ crore} \times 2 = ₹ 16 \text{ crore}$ and amount already borrowed is ₹17 crore (i.e. Term Loan of ₹ 12 crore and Working Capital of ₹ 5 crore), it has to go for the restricted amount as stated in clause (A) above, i.e. not exceeding one hundred percent of aggregate of the paid-up share capital, free reserves and securities premium account.

Therefore, the maximum amount of deposit it can accept from members will be limited to ₹ 15 crore.

In terms of the options given in the question, the company has no option but to choose Proposal 2 — Acceptance of Deposits of ₹ 14,00,00,000, to be repaid with interest @ 8% per annum.

(c) 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.

For example, books, file, painting, inscription and even computer files are all documents. However, it does not include Indian Currency Notes.

(i) Power of Attorney

It is a written legal instrument by which a person (the principal) authorizes another person (the agent) to act on their behalf. It meets the criteria of a document as it is written or expressed, contains information describing the authority granted and is intended to record and communicate the legal relationship.

(ii) Cheque

A cheque is a negotiable instrument that directs a bank to pay a specified sum of money from the drawer's account to the payee. It qualifies as a document because it is written or printed, records details such as the amount, date, and parties involved and serves as evidence of a financial transaction.

Hence, both a Power of Attorney and a Cheque fall within the definition of a "document" within the meaning of Section 3(18) of the General Clauses Act, 1897. They are tangible representations of written information intended for legal or transactional purposes.

Question 3

- (a) *UINA Infra Projects Private Limited was incorporated on 1st June, 2022. Mr. X had already registered the trade name of "UINA Infra projects" on 1st April, 2018 under the Trade Marks Act, 1999. Mr. X was suffering from a pro-longed disease since 1st April, 2021. When Mr. X recovered from illness on 20th May, 2024 and joined his own office on 5th July, 2024, he came to know from his staff members that a company has been incorporated with the name UINA Infra Projects Private Limited. He lodged a complaint with*

the Regional Director on 10th July, 2024 requesting him to order the company to change its name. The Regional Director examined the application of Mr. X and on 11th July, 2024, issued a direction to UINA Infra Projects Private Limited to change its name. Mr. D, a director of UINA Infra Projects Private Limited contended that the above direction of the Regional Director was bad in law and therefore not proper on the following grounds:

- A. That the name of the company is not too identical with or too nearly resembles to the name of any other company; and*
- B. That the stipulated time period of two years of making any complaint with respect to the name in the above ground was already over on 31st May, 2024.*

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contention of Mr. D is tenable.

Also advise UINA Infra Projects Private Limited the time period within which the company will be required to change its name in case the direction of the Regional Director was valid.

- (b) (i) Members of World One Limited, holding more than 2% of the total voting power wants the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members can do so as per the provisions of the Companies Act, 2013.*
- (ii) If a member of a listed company who has casted his vote through electronic voting, can attend general meeting of the company and change his vote subsequently?*
- (c) Explain the Latin term "Absoluta sententia expositore non indiget" and how would the same help in correctly interpreting a definition given in a legislation or statute?*

Answer

- (a)** According to section 16 of the Companies Act, 2013, if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which:

in the opinion of the Central Government (Power delegated to the Regional Director), is of opinion that name (original or revised/new) of

company is identical with or too nearly resembles to the name by which a company in existence, then, either:

- (i) On its own or
- (ii) On an application by a proprietor of already registered trade mark under the Trade Marks Act, 1999, it may direct the company to change its name.

The company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose.

Application by a proprietor of registered trade mark shall be made within three years of incorporation or registration or change of name of the company.

In the given question, UINA Infra Projects Private Limited was incorporated on 1st June, 2022. The trade mark of UINA Infra Projects was registered on 1st April, 2018.

In terms of the above stated provisions and facts of the question, we can answer the questions as under:

Part (i) - First Ground of Objection:

In the first instance, the contention of Mr. D (a director of UINA Infra Projects Private Limited) is not tenable due to the fact that the restriction is not only with respect to the name of an existing company, but also as a result of an application filed before the appropriate authority by the proprietor of a registered trademark.

In other words, the name of the company "UINA Infra Projects" is verbatim identical to the trademark registered by Mr. X. Hence, the contention of Mr. D is not tenable.

Part (ii) - Second Ground of Objection:

In the second instance also, the contention of Mr. D is not tenable. The application should be made by the proprietor of a registered trademark within three years of incorporation or registration or change of name of the company and not within two years.

- (b) (i) According to section 115 of the Companies Act, 2013, where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 23 of the Companies (Management and Administration) Rules, 2014.

Further, section 140(4) of the Companies Act, 2013 (the Act), provides provision for the appointment of an auditor other than the retiring auditor. As per this section, special notice shall be required for a resolution at an annual general meeting for appointing a person as an auditor in place of the retiring auditor, or providing expressly that a retiring auditor should not be re-appointed.

In the present case, the provisions of section 115 of the Act have been duly complied with. That is to say the notice of the intention to move such a resolution as to appointment of auditor other than the retiring auditor has been given by members of World One Limited, holding more than 2% (i.e. more than 1 %) of the total voting power. Accordingly, members can do so as per the provisions of the Companies Act, 2013.

Alternate Answer

Rule 23(1) of the Companies (Management and Administration) Rules, 2014 specifies that a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of notice.

As per the facts of the question, Members of World One Limited, holding more than 2% of the total voting power, wants the company to give a special notice to move a resolution for appointment of an auditor other than the retiring auditor.

From the above provision, it can be inferred that the members holding 2% of total voting power can approach the company to give a special notice. However, they cannot force the company to give a special notice to move a resolution for appointment of an auditor other than the retiring auditor as stated in the question.

- (ii) According to Rule 20(4) (v) (f) (C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

Thus, in the given question, if a member of a listed company has casted his vote through electronic voting, he can still attend the general meeting of the company but neither he can vote again nor he can change his vote.

(c) "*Absoluta Sententia Expositore Non Indiget*"

The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. Thus, if the words of a statute are capable of one construction only, then it would not be open to the courts to adopt any hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

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.

Thus, it is the primary duty of the court to interpret the words used in legislation according to their ordinary grammatical meaning in the

absence of any ambiguity or doubt. Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

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.

Question 4

- (a) Based on the applicable provisions of the Companies Act, 2013, define the term "foreign company" and identify which among the following companies can be categorized as a foreign company:

Sl. No.	Place of Incorporation	Registered	Additional information
1	Singapore	Singapore	Developed patient's database for a hospital in Mumbai, India, server in Singapore.
2	UAE	UAE	No place of business in India but employs agents in India.
3	Cape Town	Cape Town	Board Meeting held in Leh, India.
4	Germany	Germany	49% of the shares held by an Indian company.

- (b) NS & Associates LLP was formed in the year 2020 and it was engaged in the business of manufacturing of plastic parts for automobiles. It constituted of Mr. Naveen and Mr. Suresh as designated partners who were responsible for obtaining contracts from various automobile manufacturers across the country for supply of spare parts for vehicles.

In the year 2021 an investigation was ordered by the Tribunal against the LLP in connection with a financial fraud worth ₹ 50,25,000. Mr. J one the Accounts Manager and employee of the LLP was accused by the complainant, as one of the perpetrators to the fraud.

The Tribunal levied a penalty of ₹ 1,25,000 to be paid by Mr. J on his conviction. Mr. J approached the Tribunal and provided vital information about the other black sheep involved in the fraud thus aiding in the investigation process. The Tribunal is considering of providing some relief in the penal action taken against him, while the LLP is planning to suspend Mr. J from service for this act.

Considering the provisions of Limited Liability Partnership Act, 2008:

- (i) Decide whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?*
- (ii) Can the LLP suspend Mr. J from service for commission of the act, of revealing the name of the other accused involved in the fraud?*
- (b) What do you mean by the rule "Ejusdem Generis"? State any three situations when the Rule of "Ejusdem Generis" is not applied by the courts.*

Answer

- (a)** As per section 2(42) of the Companies Act, 2013 (the Act), "Foreign Company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

So, as per the definition, we can conclude:

Case 1: Place of Incorporation – Singapore. Developed patient's database for a Hospital in Mumbai – Server at Singapore.

It is a Foreign Company.

Though incorporated outside India, it is involved in transacting business in India and having place of business through electronic mode. Hence, it is a foreign company.

Case 2: Place of Incorporation – UAE. No place of business in India, but employs agents in India.

It is not a foreign company.

Since the company, though employed agents in India, but has no place of business in India. Hence, it is not a foreign company.

Case 3: Place of Incorporation and Registered Office – Cape Town; Board Meeting held in Leh, India.

It is not a foreign company.

Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence, it is not a foreign company.

Case 4: Place of Incorporation and Registered Office – Germany; 49% shares are held by an Indian Company.

As per the question, the company is registered in Germany and no information is available about any business(es) being carried on by the company in India which is a basic condition to be fulfilled for being called a foreign company. Under the circumstances, it is just a company incorporated outside India and shall not be considered as a foreign company.

Alternate Answer

Applying the provisions of section 379 (2) of the Companies Act, 2013, if not less than 50% of the shareholding of a foreign company is held by an Indian Company; it is treated as an Indian Company, on which provisions of Chapter XXII of the Companies Act, 2013 applies. Here, only 49 % is held by Indian Company. Hence it is a foreign company.

(b) Section 31 of the Limited Liability Partnership Act, 2008 provides that:

(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

- 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.

On the basis of the above provisions, the question can be answered as under:

- (i) Whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?

Yes, the Tribunal has the power to waive or reduce the penalty of ₹ 1,25,000 being imposed on Mr. J as he has provided useful information that is helpful towards investigations in the case of fraud by the LLP.

- (ii) Can the LLP suspend Mr. J?

Section 31(2) of the LLP Act, 2008 further provides that:

No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). Hence, Mr. J cannot be suspended from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

- (c) The term '*Ejusdem Generis*' means of the same kind or species. Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified. The rule of ejusdem generis is not an absolute rule of law but only a part of a wider principle of construction and therefore this rule has no application where the intention of the legislature is clear.

Situations when the Rule of Ejusdem Generis is not applied by the Courts:

In the following situations, the term "Ejusdem Generis" is not applied by the Courts.

1. If the preceding term is general, as well as that which follows this rule cannot be applied.
2. Where the particular words exhaust the whole genus.
3. Where the specific objects enumerated are essentially diverse in character.
4. Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

Question 5

- (a) *Quick Money Limited attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ₹ 15 crore during each of the preceding five years. In this connection, the Board of Directors of the company needs your expert views on the following matters:*
- (i) *What is the meaning of "impact assessment"?*
 - (ii) *Whether impact assessment is required to be taken by all the companies?*
 - (iii) *Who can conduct impact assessment?*
- (b) *State the circumstances under which the winding up of an LLP may be ordered by the Tribunal.*
- (c) *Define the term 'person' as per the General Clauses Act, 1897. Discuss which of the following will be treated as a person:*
- (i) *An idol*
 - (ii) *A public body*
 - (iii) *A company*

Answer

- (a) Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 provides the class of companies that are required conduct an impact assessment.

Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Companies Act, 2013, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

The above-mentioned companies may undertake impact assessment, through an independent agency.

Alternate Answer

- (i) Meaning of Impact Assessment:

The impact assessment is an exercise to assess the social, economic and environmental impact of a particular CSR project. Impact assessment intends to evaluate "social, economic and environmental return on investment". It is the exercise of taking a retroactive view of the Corporate Social Responsibility (CSR) activities completed by the entity and assess the effects of these activities on various stakeholders like employees, customers, communities and the environment.

Impact assessment is seemingly another step to encourage companies to make considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

- (ii) Whether the impact assessment is to be taken by all Companies?

Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amount of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires the following class of companies to conduct an impact assessment:

Every company having average CSR obligation of ₹ 10 crore or more in the three immediately preceding financial years of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking impact assessment.

- (iii) Who can conduct an impact assessment?

The impact assessment shall be conducted by an independent agency.

(b) Circumstances in which Limited Liability Partnership may be wound up by Tribunal (Section 64 of the Limited Liability Partnership Act, 2008):

A limited liability partnership may be wound up by the Tribunal:

- (a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

- (b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- (c) if the limited liability partnership is unable to pay its debts;
- (d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the limited liability partnership 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
- (f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(c) Definition of the term “Person”

As per section 3(42) of the General Clauses Act, 1897, “Person” shall include:

- any company, or
- an association, or
- body of individuals, whether incorporated or not.

From the above definition, we can conclude:

- (i) An Idol:** An idol is a juristic person. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an idol is a person.
- (ii) A Public Body:** A public body to be a person need not always be set-up by the statute. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and is treated as a "person."
- (iii) A Company:** The definition of person includes a company. Thus, a company is a person.

Question 6

- (a) *Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming of world class cricketers. The foundation selects young*

boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently it is having 1200 members. The Annual General meeting of the company is usually held at the club cum registered office of the company at Jaipur.

The members in one of the general meetings have strongly suggested that the next Annual general meeting of the company be held at a hotel in near vicinity of the Registered office at Jaipur instead of the Club as the same has a congested sitting area.

It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with facility of only physical voting and no E-Voting to be provided to the members.

Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:

- (i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?
- (ii) Whether a 15 days' prior notice is valid and as per the law?
- (iii) Whether the decision to provide the facility of only physical voting and not E-Voting valid?

OR

- (a) Srinivas Iron and Steel Ltd. is a public sector listed company engaged in the manufacture of high-end steel sheets to be supplied to various other entities country-wide. M/s CVB & Associates, Chartered Accountants, had been appointed as the statutory auditors of the company for the term F.Y. 2023-24. Later in the year a financial fraud has come to the fore, not reported by the current auditors in their report, leading to dissatisfaction amongst a group of learned members of the company.

The next Annual General Meeting is scheduled on 28.09.2024. The members comprising of Mr. H, Mr. J, Mr. K holding paid up share capital ₹ 1,50,000; ₹ 1,00,000; ₹ 2,50,000 respectively have collectively decided to send a special notice to the company regarding passing of the resolution at

the next Annual General Meeting for appointment of an auditor other than M/S CVB & Associates as the auditor for the next term.

Referring to the provisions of the Companies Act, 2013 elaborate:

- (i) Whether the above members can validly issue such Special Notice to the company?*
- (ii) What will be the last date for issue of such Special Notice by the members to the company?*
- (iii) Whether the company would have to communicate about the above Special Notice to other members after receiving the same?*
- (b) Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.*
- (c) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the meaning of the term "current account transaction".*

Answer

- (a)** (i) Whether it is compelling upon the Board to consider the directions regarding shift of the venue of the meeting?

In the case of section 8 company, in pursuance of the second proviso to section 96(2) of the Companies Act, 2013, the time, date and place of each Annual General Meeting is required to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. [Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs on the 5th June, 2015].

Hence, the directors are bound to consider the directions regarding shifting of venue for the next Annual General Meeting.

Alternate Answer to Part (i)

As per the facts of the question, the members, in one of the general meetings, have strongly suggested that the next AGM of the company be held near the vicinity of the Registered Office at Jaipur instead of the club as the same has congested sitting area.

Since only suggestions have been given in one of the general meetings, the same cannot be construed as a compulsion on the part of the Board to act thereon. A mere suggestion will not tantamount to be a binding direction. In other words, a suggestion is just an idea or an opinion that someone proposes which need be compulsorily acted upon, while a direction is a set of instructions for where to go or what to do.

So, the suggestion by the shareholders is non-binding on the Board.

- (ii) Whether a 15 days' prior notice is valid as per law?

Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs dated 5th June, 2015 provides that section 8 company can hold a meeting with minimum of 14 days' notice as against 21 days' notice otherwise applicable under section 101 (1) of the Companies Act, 2013.

Hence, the director can validly issue a 15 days' notice being greater than 14 days as provided in the notification and the notice is as per the law.

- (iii) Whether the decision to provide the facility of only physical voting and not e-voting valid?

Yes, as per the provision of section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, section 8 company, having a number of members of 1000 or more, is required to provide e- voting facility to its members at a general meeting. Hence, the decision of the foundation, to provide the facility of only physical voting and not E-voting, is not valid as section 8 Company is having 1200 members.

OR

- (i) Whether the members Mr. H, Mr. K and Mr. J can validly issue special notice to the company?

According to section 115 of the Companies Act, 2013 (the Act), where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate

sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 of the Companies (Management & Administration) Rules, 2014, provides that a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

As per section 140 (4) of the Act, a special resolution is required to be passed for appointment of an auditor other than the retiring auditor at an annual general meeting.

Mr. H, Mr. J and Mr. K are together holding shares of $(1,50,000 + 1,00,000 + 2,50,000) = ₹ 5,00,000$, which is equal to the minimum required shares to be held by members for validly issuing a Special Notice. Hence, they can validly ask the company to issue the special notice.

(ii) Last date for issue of Special Notice:

Rule 3 of Companies Management and Administrative Amendment Rules 2014:

The notice referred to in sub-rule (1) shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Hence, in the above case, the special notice shall be sent by the members to the company latest by 13.09.2024.

(iii) Whether the company needs to communicate the special notice to the other members after receipt of the same?

Yes, the company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

Alternate Answer

In the question, it is mentioned that Srinivas Iron and Steel Limited is a Public Sector, Listed Company, which means that, being a Public Sector Company, it is a Government Company.

According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Changing the Auditor: For changing the Auditor of a Government Company, the Auditor can be changed after seeking consent of the Board and thereafter by writing to the C&AG, New Delhi, by mentioning the reference of negligence on the part of the Statutory Auditors for not reporting the fraud committed in the Company.

Thereafter, considering the request of the company, the C&AG can change the auditor or the audit firm. However, the remuneration of the auditors shall be approved by the shareholders in its general meeting on the recommendations of the Audit Committee as well the Board of Directors of the company.

- (b)** Section 124 of the Companies Act, 2013 contains the provisions relating to Unpaid Dividend Account (UDA).

Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account.

Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of declaration, the company shall, within 7 days from the expiry of the said period of 30m days, transfer the total amount of unpaid or unclaimed dividend to a special account called the 'Unpaid Dividend Account' which shall be opened in any scheduled bank.

If any money transferred to this Unpaid Dividend Account remains unpaid or unclaimed for a period of seven years from the date of transfer of such

account, it shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund established under section 125(1) of the Companies Act, 2013 maintained and administered by the Central Government.

As per section 124(6) of the Act, all shares in respect of which the dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

As per the facts of the question, Manish, a shareholder of the company has not claimed his dividends from the company for the last 10 years. Eventually, after expiry of the 7th consecutive year, the shares of Manish along with the dividends due to him for the last 10 years would have been already transferred by the company to the Investor Education and Protection Fund along with a statement containing the prescribed details.

Therefore, Manish should claim his shares along with the dividends due from IEPF in accordance with the prescribed procedure and on submission of prescribed documents.

(c) Meaning of the term “Current Account Transaction”

As per the provision of section 2(j) of the Foreign Exchange Management Act, 1999, “Current Account Transaction” means a transaction other than a Capital Account Transaction and includes the following types of transactions:

- (i) Payments in the course of ordinary course of foreign trade, other services such as short-term banking and credit facilities in the ordinary course of business etc.,
- (ii) Payments in the form of interest on loans or 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.

PAPER – 2: CORPORATE AND OTHER LAWS

PART I

Case Scenario I

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: (Q.No.1 to Q.No.3)

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 II

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: (Q. No. 4 to Q. No. 6)

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 III

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: (Q. No. 7 to Q. No. 9)

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 IV

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: (Q. No. 10 to Q. No. 12)

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:*
- (A) *Capital Account Transactions*
 - (B) *Current Account Transactions*
 - (C) *Hybrid Transactions*
 - (D) *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?*
- (A) *On or after January 1st 2029*
 - (B) *On or after April 1st 2029*
 - (C) *On or after April 1st 2027*
 - (D) *On or after January 1st 2027*
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?*
- (A) *The court can issue a mandamus with a view to compel the government to bring the Act into operation on a particular day.*
 - (B) *The court can through a writ direct the Government to consider the question as to when the Act should begin to operate.*
 - (C) *The court can publish a date in Official Gazette as an effective date for enforcement of the Act.*

- (D) *The court cannot direct the government to consider the question as to when Act should begin to operate.*
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:*
- (A) *To exclude female*
- (B) *To exclude boy child*
- (C) *To exclude girl child*
- (D) *To include females*

Answer Key

MCQ No.	Correct Option
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)

PAPER – 2: CORPORATE AND OTHER LAWS

PART II

Question No. **1** is compulsory.

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

Question 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)**

Answer

- (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.

Assumption: In this question, nothing is specified about the nature of the company. Hence, drawing a positive assumption that Right Trading Limited is a company on which the provisions related to rotation of auditors [as specified under section 139(2)], are applicable.

- (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.

Question 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)

Answer**(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.

Conclusion:

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.

Question 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)*

Answer

- (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).

Question 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:*

<i>Financial year ending 31st March</i>	<i>Rate of Dividend declared</i>
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)*

Answer

- (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.

Question 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)**

Answer

- (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.

Question 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:*

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

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

- (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.

PAPER – 2: CORPORATE AND OTHER LAWS

Question No. 1 is compulsory.

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

Question 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)**

Answer

- (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% 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).

Question 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) (i) 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. **(2 Marks)**

- (ii) *Mr. M issued a cheque of ₹ 3,00,00 dated 31.12.2023 at 10 a.m. to Mr. N as a consideration towards the medical services provided by the later. Mr. N presented the above cheque on 31.03.2024 during the banking business hours. The cheque was dishonoured taking the plea that it was not presented within the requisite time of 3 months as provided under section 138 of the Negotiable Instruments Act 1881.*

Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid. **(2 Marks)**

Answer

- (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) (i)** 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.

- (c) (ii) As per the section 9 of the General Clauses Act, 1897, in case 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".

The first day in series is 31.12.2023 and last day is 31.03.2024. Hence, applying the above provisions, 31.12.2023 is to be excluded and 31.03.2024 is to be included in calculation as per the General Clauses Act, 1897.

Since, the cheque has been presented within 3 months i.e. on 31.03.2024, it is eligible for honor and payment.

Hence, the plea of dishonouring the cheque is not valid.

Question 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. 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)**

Answer**(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.

Assumption: It is assumed that these 14 persons are inclusive of Mr. Mohan.

- (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.

Question 4

- (a) *Long Boots Ltd. a listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new Production Manager, Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of ₹ 50 lakh after a gap of eight years during which profits were inadequate to distribute the same.*

The dividend thus proposed is to be met partially out of the current year profit of ₹ 16 lakh. Accumulated profits during the past eight years were ₹ 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

(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 and its winding up by the Tribunal 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 Statues.*

(4 Marks)

Answer

- (a) According to second proviso to section 123, where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the *Companies (Declaration and Payment of Dividend) Rules, 2014*.

Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Under Rule 3 such declaration shall be subject to the following conditions:

CONDITION I

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

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

CONDITION III

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

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

In the given question, since Long Boots Ltd. current year profits of ₹ 16 lakh are insufficient to meet the dividend requirement of ₹ 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

Particulars	Amount (in ₹)
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh
Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Fulfilment of Conditions mentioned in Rule 3

Conditions	Calculation		Met/ Not Met
I	This condition is not applicable the company has not declared any dividend in each of the three preceding financial year.		-
II	Paid-up share capital and free reserves	680+ 170	Met
		= 850 lakh (C)	

	10% of (C)	85 lakh	
	Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C)		
III	The company has since made profit in the financial year in which dividend is declared.		Met
IV	Free Reserves (D)	170 lakh	Met
	Amount drawn for payment of dividend (E)	34 lakh	
	Balance of reserves after such withdrawal (F) = (D) - (E)	136 lakh	
	15% of its paid up share capital (G)	102 lakh	
	(F) more than (G)		

In the given question, since all the conditions are met, hence Long Boots Ltd. has validly declared dividend.

(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.

As per section 64 of the Limited Liability Partnership Act, 2008, the circumstances in which LLP may be wound up by Tribunal are:

- (a) if the LLP decides that LLP be wound up by the Tribunal;

- (b) if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;
 - (c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;
 - (d) 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; or
 - (e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
- (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.

Question 5

- (a) *Stallworth Ltd., a listed company having a paid up share capital of ₹ 11 crore with a turnover of ₹ 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.*

Discuss in the light of the Companies Act, 2013:

- (i) *The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?*
- (ii) *The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company?* **(5 Marks)**
- (b) (i) *Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008.* **(3 Marks)**
- (ii) *Describe the consequences of making a false statement in any return, statement or other document under section 37 of the Limited Liability Partnership Act, 2008.* **(2 Marks)**
- (c) *State the provisions of the General Clauses Act, 1897 relating to 'gender and number'.* **(4 Marks)**

Answer

- (a)** According to section 177 of the Companies Act, 2013 read with the *Companies (Meetings of Board and its Powers) Rules, 2014*, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of *Companies (Meetings of Board and its Powers) Rules, 2014*, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

- (i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

- (ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.
- (b)** (i) 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).
- (ii) According to section 37 of the Limited Liability Partnership Act, 2008,

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement:

- (a) which is false in any material particular, knowing it to be false; or
- (b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

(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.

Question 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?*

OR

- (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.*

- (i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.*
- (ii) the voluntary revision of financial statements or board's report by the directors.*
- (iii) For how many preceding financial years the board of directors may revise the financial statements? **(5 Marks)***

- (b) (i) Who will sign the audit report in case of a proprietorship concern or the firm of the auditors and how the qualification/s in the audit report will be dealt with by the auditor at the annual general meeting of the company as per the provisions of the Companies Act, 2013?*

(3 Marks)

- (ii) *Explain the provisions relating to expert's consent included in the prospectus to be issued in India by the companies incorporated outside India as per the provisions of the Companies Act, 2013. (2 Marks)*
- (c) *Explain the rules relating to the remittances made by persons other than individuals requiring approval of RBI as provided in Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued under the Foreign Exchange Management Act, 1999 in respect of the following:*
- (i) *Commission to the agents abroad for sale of residential flats or commercial plots in India.*
 - (ii) *Remittances for consultancy services procured from outside India.*
 - (iii) *Remittances by way of reimbursement of pre-incorporation expenses.*
- (4 Marks)**

Answer

- (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.

OR

Answer

- (a) (i) 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.

- (ii) According to 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 three preceding financial years.

Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

- (iii) The board of directors may revise financial statements in respect of any of the three preceding financial years.

- (b)** (i) As per section 145 of the Companies Act, 2013,

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of section 141(2) (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).

The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

- (ii) According to section 388 of the Companies Act, 2013,
 - (i) 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 been established, or when formed will or will not establish, a place of business in India,-
 - (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
 - (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, 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), so far as applicable.
 - (ii) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.
- (c) The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India as provided under FEMA, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000:

- (i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
- (ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression “infrastructure’ shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.

- (iii) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

PAPER – 2 : CORPORATE & OTHER LAW

Question No. 1 is compulsory.

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

Question 1

(a) The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 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 Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions 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 2020-21. The ROC has issued a notice to Smart Solutions 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 Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
- (ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement? **(6 Marks)**

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

Sr. No.	Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2020 (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 ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21. **(3 Marks)**

- (ii) *ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 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?* **(3 Marks)**
- (c) *Paul (minor) purchased a smart phone on credit from a mobile dealer on the surety given by Mr. Jack, (a major). Paul did not pay for the mobile. The mobile dealer demanded the payment from Mr. Jack because the contract entered with Paul (minor) is void. Mr. Jack argued that he is not liable to pay the amount since Paul (Principal Debtor) is not liable. Whether the argument is correct under the Indian Contract Act, 1872?*
- What will be your answer if Jack and Paul both are minor?* **(4 Marks)**
- (d) *A signs his name on a blank cheque with 'not negotiable crossing' which he gives to B with an authority to fill up a sum of ₹ 3,000 only. But B fills it for ₹ 5,000. B then endorsed it to C for a consideration of ₹ 5,000 who takes it in good faith. Examine whether C is entitled to recover the full amount of the instrument from B or A as per the provisions of the Negotiable Instruments Act, 1881.* **(3 Marks)**

Answer

- (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 fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (B) turnover as per profit and loss account for the immediately preceding financial year not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 totalling ₹ 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company.

Further, the paid up share capital (₹ 50 lakhs) and turnover (₹ 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions 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.

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

- (b) (i) According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board 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., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

- (ii) 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 thirty 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 thirty days by the shareholders or not.

In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021). It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the

company for failure to distribute the dividend within 30 days of declaration.

- (c) In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

In the given question, the contract is a valid contract and Jack (major) shall be liable to pay the amount even if Paul (Principal debtor) is not liable (as Paul is minor).

If both Jack and Paul are minors then the agreement of guarantee is void because the surety as well as the principal debtor are incompetent to contract.

- (d) As per section 130 of the Negotiable Instruments Act, 1881, a cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques i.e., they cannot be negotiated. The holder of such a cheque cannot acquire title better than that of the transferor.

In the given question, A gave to B the blank cheque with 'not negotiable crossing'. B had an authority to fill only a sum of ₹ 3,000 but he filled it up ₹ 5,000. This makes B's title defective. B then endorsed it to C for consideration of ₹ 5,000.

In the light of above stated facts and provision, C is not entitled to recover the full amount from A or B as C cannot acquire a title better than that of the transferor (B).

Question 2

- (a) *Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:*

- (i) *The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.*
- (ii) *The Registrar may, for any special reason, extend the time within which the first AGM shall be held.*
- (iii) *Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.*
- (iv) *There shall be a maximum interval of 15 months between two AGMs.* **(4 Marks)**

- (b) (i) *KSR Limited, an unlisted company furnishes the following data :*

- (a) *Paid-up share capital as on 31-3-2021 ₹ 45 Crore.*
- (b) *Turnover for the year ended 31-3-2021 ₹ 175 Crore*
- (c) *Outstanding loan from bank as on 3-3-2021 ₹ 105 crore (₹ 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 ₹ 90 crore after repayment.*

Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022? **(3 Marks)**

(ii) State the provisions of the Companies Act, 2013 relating to appointment of First Auditor of a Government Company. **(3 Marks)**

- (c) Mr. Stefen owns a chicken firm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar firm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his firm to Mr. Stefen for one year and received a deposit of ₹ 25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case. **(4 Marks)**

- (d) Mr. Harsha donated ₹ 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities.

He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881. **(3 Marks)**

Answer

- (a) (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.

Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is **incorrect**.

- (ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is **incorrect**.

- (iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.

Hence, the given statement is **correct**.

- (iv) According to section 96, the gap between two annual general meetings should not exceed 15 months.

Hence, the given statement is **correct**, that there shall be a maximum interval of 15 months between two AGMs.

- (b) (i) 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, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., ₹ 105 crore on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

- (ii) According to section 139(7) of the Companies Act, 2013-

- (1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.
- (2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.
- (3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an Extra ordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

- (c) According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

Right of Mr. Flemming: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged .

- (d) In the given instance, Mr. Harsha donated ₹ 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

Question 3

- (a) *State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.*
- (i) *Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.*
 - (ii) *Whether the Company may be wound up?*
 - (iii) *Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?*

(5 Marks)

- (b) *AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.* **(5 Marks)**
- (c) *Examine the following cases with respect to their validity. State your answer with reasons.*
- (i) *A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2021, if presented on 01-01-2021.*
- (ii) *A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto.* **(3 Marks)**
- (d) *Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.* **(3 Marks)**

Answer

- (a) (i) According to Section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation 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.
- Hence, in the instant case, the Central Government can revoke the license given to State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.
- (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. [Section 8(7)] Hence, the stated company may be wound up.

- (iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)]

In the instant case, State Cricket Club cannot be merged with Cool Net Private Limited as the objects of both the companies are different and not similar.

- (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.

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

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the *Companies (Registration Offices and Fees) Rules, 2014*.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of X Ltd. to remove AB & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

- (c) (i) The bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-1-2021, if presented on 01-01-2021: This statement is not valid as no days of grace are allowed in the case of bill payable on demand.
- (ii) A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto:

As per section 93 of the Negotiable Instruments Act, 1881, notice of dishonor must be given by the holder to all parties other than the maker or the acceptor or the drawee whom the holder seeks to make liable. Accordingly, notice of dishonour to

the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

- (d) **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.

Question 4

- (a) (i) *"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. (3 Marks)*
- (ii) *ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013. (3 Marks)*
- (b) *The Promoters of Jayshree Spinning Mills 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? **(4 Marks)**

(c) *Examine the validity of the following statements with reference to the General Clauses Act, 1897:*

(i) *Insurance Policies covering immovable property have been held to be immovable property.*

(ii) *The word "bullocks" could be interpreted to include "cows".* **(4 Marks)**

(d) *Whether Foreign decisions can be used for construing Indian Statute? Explain.* **(3 Marks)**

Answer

(a) (i) 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.

(ii) **Information Memorandum together with Shelf Prospectus is deemed Prospectus.** The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Section 31]

Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

- (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

No further prospectus is required for issue of securities. [Sub-section (1)]

Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is correct.

- (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 Jayshree Spinning Mills 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 Jayshree Spinning Mills Limited will be regarded as deposit.

- (c) (i) **Insurance Policies covering immovable property have been held to be immovable property:** This statement is not valid.

Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

- (ii) **The word 'bullocks' could be interpreted to include 'cows':** This statement is not valid. 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. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

- (d) **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.

Question 5

(a) *Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:*

- (i) *The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.*
- (ii) *The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.*
- (iii) *The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.*

(5 Marks)

(b) *Johnson Limited goes for Public issue of its shares. The issue was over subscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.*

State, who are the persons considered as officers in default under the Companies Act, 2013.

Examine who will be considered in default in the instant case?

(5 Marks)

OR

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

- (i) *Whether he can inspect the minutes book and to have copies of the minutes at free of cost?*
 - (ii) *Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?*
- (c) *A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party. C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and*

requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?

(4 Marks)

- (d) *Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.*

(3 Marks)

Answer

- (a) Regarding the validity of Proposals w.r.t change of registered office by A Ltd. in the light of the section 12 of the Companies Act, 2013:**

- (i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

- (ii) Section 12 talks about shifting of Registered office only, In the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.

[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State.

In line section 12 (5) of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.]

- (iii) In the third case, change of registered office within the local limits of the same city.

Said proposal is valid in terms it has been passed under the authority of Board resolution.

- (b)** As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who

is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
- (vi) every director, in respect of a contravention of any of the provisions of this Act,
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

OR

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes .

Accordingly, following are the answers:

- (i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.
- (ii) As provision does not specify anything on authorizing any one else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the

minutes book on behalf of him

- (c) As per section 200 of the Indian contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In the given instance, A rented his house to B on lease for 3 years. The lease agreement was terminable on three months' notice. C, son of A, gives notice of termination to B, without any authority, to vacate the house within a month. Also requested A to ratify his action.

Here by the act of C, the interest of B is affected, therefore the principle of ratification does not apply. Hence, it's not valid for A to ratify the action of C, thereby causing the notice to be binding on B.

- (d) The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

PAPER – 2 : CORPORATE & OTHER LAW

Question No. 1 is compulsory.

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

Question 1

- (a) A Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further reveals that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and A Ltd. received an amount of ₹ 20,00,000 on share application. A Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013. **(6 Marks)**

- (b) (i) Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company.

Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013. **(3 Marks)**

- (ii) A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case? **(3 Marks)**

- (c) Radheshyam borrowed a sum of ₹ 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹ 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹ 50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872 ? **(4 Marks)**

- (d) Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

A Bill of Exchange originally drawn by R for a sum of ₹ 10,000 but accepted by S only for ₹ 7,000. **(3 Marks)**

Answer

- (a) As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013.

According to Section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-

- the amount stated in the prospectus as the minimum amount has been subscribed, and
- the sums payable on application for the amount so stated have been paid to, and received by the company by cheque or other instrument.
- The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

In the question, A Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.

Further, it revealed that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.

In the given instance, there is compliance to section 23, as nothing is talked about matters required to be included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

The provisions of section 40 of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.

Consequently, A Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

- (b) (i) As per the provisions of Section 141 (3) of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.

In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

- (ii) Section 105 of the Companies Act, 2013 deals with the provisions of proxy for meetings.

Section 105(1) of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, Section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

- (c) **General lien of bankers:** According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged. Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹ 50,000/-, which has already been fully repaid by Radheshyam. Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹ 20,000/- (which is the second loan) is not valid.

- (d) As per the provisions of Section 86 of the Negotiable Instruments Act, 1881, if the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the

sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation to the above section states that an acceptance is qualified where it undertakes the payment of part only of the sum ordered to be paid.

In view of the above provisions, the bill, which has been drawn by R for ₹ 10,000/-, has been accepted by S only for ₹ 7,000/-. It is a clear case of qualified acceptance, which may either be rejected by R or he may give assent to the acceptance of ₹ 7,000/- only.

Question 2

- (a) RS Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit.

The share application money of ₹ 5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013. **(4 Marks)**

- (b) (i) *The Board of Directors of Dilip Telelinks Ltd. consists of Mr. Choksey, Mr. Patel (Directors) and Mr. Shukla (Managing Director). The company has also employed a full time Secretary. The Profit and Loss Account and Balance Sheet were signed by Mr. Choksey and Mr. Patel. Examine whether the authentication of financial statements of the company is in accordance with the provisions of the Companies Act, 2013 ?* **(3 Marks)**
- (ii) *X Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2019 and turnover of ₹ 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.* **(3 Marks)**
- (c) *Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:*
- (i) *A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.*

- (ii) *A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C ?* **(4 Marks)**
- (d) *A promissory note specifies that three months after, A will pay ₹ 10,000 to B or his order for value received. It is to be noted that no rate of interest has been stipulated in the promissory note. The promissory note falls due for payment on 01.09.2019 and paid on 31.10.2019 without any interest. Explaining the relevant provisions under the Negotiable Instruments Act, 1881, state whether B shall be entitled to claim interest on the overdue amount?* **(3 Marks)**

Answer

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

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, RS Limited has received ₹ 50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30.07.2019 the company adjusted the amount of ₹ 5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

- (1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹ 50 Lac as 'Deposits' on 31.07.2019.

- (2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.
- (b) (i) According to Section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Choksey and Mr. Patel, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Shukla, the Managing Director should have been one of the two signing directors.

Further, since the company has also employed a full-time Secretary, he should also sign the Balance Sheet and the Statement of Profit and Loss.

- (ii) According to the provisions of Section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:
- (1) every listed company;
 - (2) 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;
 - (C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
 - (D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, X limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid-up share capital or turnover is applicable for unlisted public company).

Hence, the advice of the Company Secretary is not correct.

- (c) (i) According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

- (ii) According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub-agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

- (d) **When no rate of interest is specified in the instrument:** As per the provisions of Section 80 of the Negotiable Instruments Act, 1881, when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

In the given question, the promissory note falls due for payment on 1.9.2019 and was paid on 31.10.2019. The note does not mention any rate of interest, hence interest will be charged @ 18% p.a.

Thus, B shall be entitled to claim interest on the overdue amount for the period from 01.09.2019 to 31.10.2019, @ 18% p.a.

Question 3

- (a) *State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized?* **(5 Marks)**
- (b) *Mr. R, holder of 1000 equity shares of ₹ 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of ₹ 2000*

declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education And Protection Fund.

Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

(5 Marks)

- (c) *Gireesh, a legal successor of Ripun, the deceased person, signs a Bill of Exchange in his own name admitting a liability of ₹ 50,000 i.e. the extent to which he inherits the assets from the deceased payable to Mukund after 3 months from 1st January, 2019. On maturity, when Mukund presents the bill to Gireesh, he (Gireesh) refuses to pay for the bill on the ground that since the original liability was that of Ripun, the deceased, therefore, he is not liable to pay for the bill.*

Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether Mukund can succeed in recovering ₹ 50,000 from Gireesh. Would your answer be still the same in case Gireesh specified the limit of his liability in the bill and the value of his inheritance is more than the liability ?

(4 Marks)

- (d) *Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Soheli is correct?*

(3 Marks)

Answer

- (a) When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issues shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount. However, as per the provisions of section 53 of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.

As per the provisions of sub-section (1) of section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account".

Application of Securities Premium Account: As per the provisions of sub-section (2) of section 52 of the Companies Act, 2013, the securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
 - (b) in writing off the preliminary expenses of the company;
 - (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
 - (e) for the purchase of its own shares or other securities under section 68.
- (b) According to section 124 of the Companies Act, 2013:
- (1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account** - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
 - (2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)** - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
 - (3) **Transfer of Shares to IEPF**- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.
 - (4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2011 to last week of September 2019). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2011).

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

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

- (c) Liability of a legal representative** (Section 29 of the Negotiable Instruments Act, 1881): A legal representative of a deceased person, who signs his name on a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him.

Thus, in the absence of an express contract to the contrary, the liability of a legal representative is unlimited. However, a legal representative may, by an express agreement, limit his liability to the extent of the assets received by him.

In the light of the stated provision, Mukund can succeed in recovering ₹ 50,000 from Gireesh as he has admitted liability of ₹ 50,000 i.e. to the extent of the assets received by him from the Ripun, the deceased.

Yes, the limit of liability specified in the bill by Gireesh, will remain same even if value of his inheritance is more than the liability, in case he specified the liability by an express agreement.

(d) Rule of Literal Construction

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "*absoluta sententia expositore non indeget*" 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.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Sohail (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.

Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Question 4

- (a) *CDS Ltd. is planning to make a private placement of securities. The Managing Director arranged to obtain a brief note from some source explaining the salient features of the issue of private placement that the Board of Directors shall keep in mind while approving the proposal on this subject. The brief note includes, inter alia, the information / suggestions on the following points:*

- (i) *A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year.*

The aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme.

- (ii) *The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.*

The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013. **(4 Marks)**

- (b) (i) *Referring to the provisions of the Companies Act, 2013, examine the validity of the following:*

Safar Limited having a net worth of ₹ 130 crore wants to accept deposits from its members. It has approached you to advise whether it falls within the category of an eligible company? What special care has to be taken while accepting such deposits from members? **(3 Marks)**

- (ii) *Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013. (3 Marks)*
- (c) (i) *PK and VK had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2018, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897? (2 Marks)*
- (ii) *Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897. (2 Marks)*
- (d) *What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations? (3 Marks)*

Answer

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

It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

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

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

- (i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.

The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct.

- (ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year.

Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

- (b) (i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, an "eligible company" as referred to in section 76(1) of the Companies Act, 2013 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.

However, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a) of the Companies (Acceptance of Deposits) Rules, 2014, an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Safar Limited is having a net worth of ₹ 130 crores. Hence, it falls in the category of 'eligible company'.

The fact that turnover has not been stated in the question will not affect this answer, since fulfilling any one criteria will be sufficient.

Thus, Safar Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

- (ii) According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

- (c) (i) According to Section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the given question, the court fixed the date of hearing of dispute between PK and VK, on 29.04.2018, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the hearing date of 29.04.2018, shall be extended to the next working day.

- (ii) According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

- (d) External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.

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

Question 5

- (a) (i) *London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:*

(A) *Whether company's proposal is in order?*

(B) *Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?*

(3 Marks)

- (ii) *The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of ₹ 3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of ₹ 40,000 per month, to buy 500 partly paid-Up equity shares of ₹ 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.*

(2 Marks)

OR

- (a) *The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.*

(5 Marks)

- (b) *Veena Ltd. held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Mohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Mohan Rao, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the*

provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Mohan Rao and by whom?

(5 Marks)

(c) *Satya has given his residential property on rent amounting to ₹ 25,000 per month to Tushar. Amit became the surety for payment of rent by Tushar. Subsequently, without Amit's consent, Tushar agreed to pay higher rent to Satya. After a few months of this, Tushar defaulted in paying the rent.*

(i) *Explain the meaning of contract of guarantee according to the provisions of the Indian Contract Act, 1872.*

(ii) *State the position of Amit in this regard.*

(4 Marks)

(d) *"The act done negligently shall be deemed to be done in good faith."*

Comment with the help of the provisions of the General Clauses Act, 1897. **(3 Marks)**

Answer

(a) (i) According to the provisions of section 68 (2) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub-section (1), unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

In the instant case, London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.

(A) the Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.

- (B) if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our answer will not change. This proposal of the company will also be not in order.
- (ii) As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per the provisions of section 67(3)(c) of the Companies Act, 2013, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore this condition has not been fulfilled;
2. The amount does not exceed their salary or wages for a period of six months.- This condition has not been fulfilled.
3. The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd., which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.

Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

OR

(a) Doctrine of Indoor Management

According to this doctrine, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. They can simply assume that all the required things were done properly in the company.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management was evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

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.

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 in the circumstances where company does not make proper inquiry.

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.

The above doctrines have been well considered while framing the provisions of various Acts pertaining to the companies worldwide. The Companies Act, 2013 and the earlier Acts relevant for the Companies in India are no exception to the same.

- (b) Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or

creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules, 2014 read with section 118 of the Companies Act, 2013, each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of Veena Ltd. can be signed in the absence of Mr. Mohan Rao, by any director, authorized by the Board in this respect.

- (c) (i) **Contract of guarantee:** As per the provisions of section 126 of the Indian Contract Act, 1872, a contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

Three parties are involved in a contract of guarantee:

Surety- person who gives the guarantee,

Principal debtor- person in respect of whose default the guarantee is given,

Creditor- person to whom the guarantee is given

- (ii) According to the provisions of section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the instant case, Satya (Creditor) cannot sue Amit (Surety), because Amit is discharged from liability when, without his consent, Tushar (Principal debtor) has changed the terms of his contract with Satya (creditor). It is immaterial whether the variation is beneficial to the surety or does not materially affect the position of the surety.

(d) **Good Faith**

In general, anything done with due care and attention, which is not mala fide is presumed to have been done in good faith.

But, 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 is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

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.