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1. PRELIMINARY

PRACTICE QUESTIONS

Question 1.

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and turnover of ₹ 60 crore. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

i. Whether the MNP Private Ltd. can avail the status of small company?

ii. What will be your answer if the turnover of the company is ₹ 30 crore?

Answer:

PROVISION: As per Sec. 2(85) of Companies Act, 2013, Small Company means a company other than a public company and:

a. Whose paid-up capital shall not exceed Rs. Two Crore or such higher amount as may be prescribed which shall not exceed Rs. Ten Crore AND

b. Whose turnover shall not exceed Rs. Twenty Crore or such higher amount as may be prescribed which shall not exceed Rs. Hundred Crore.

c. Which do not have a holding company or subsidiary company.

Which is not a Sec. 8 Company.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.

ANALYSIS AND CONCLUSION:

i. In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and having turnover of ₹ 60 crore. Since only one criteria of share capital not exceeding ₹ 4 crore is met, but the second criteria of turnover not exceeding ₹ 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

ii. If the turnover of the company is ₹ 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Question 2.

Flora fauna limited was registered as a public company. There are 230 members in the company as noted below:

a.	Directors and their relatives	50
b.	Employees	15
c.	Ex- Employees (Shares were allotted when they were employees)	10
d.	5 Couples holding shares jointly in the name of husband and wife (5*2)	10
e.	Others	145

The board of directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

Answer:

PROVISION: As per Provisions of Companies Act, 2013, A Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

a. Restricts the right to transfer its shares.

b. Limits the number of its members TO 200 (In case of OPC company – Only one member)

c. Prohibits any invitation to the public to subscribe for any securities of the company.

d. COUNTING OF NUMBER:

- ✓ Where 2 or more persons hold one or more shares in a company jointly, they shall be treated as a single member.
- ✓ Persons who are in the employment of the company – SHALL NOT BE COUNTED
- ✓ Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased - SHALL NOT BE COUNTED (Past Employees shall not be counted.)
- ✓ An Existing Member joined as an employee – Counted.

ANALYSIS AND CONCLUSION:

In the given case the total number of members of the company are counted as below:

1. Directors and relatives – 50
2. Employees – Not counted
3. Past Employees – Not Counted (As Shares were allotted during employment)
4. Couple Shareholding – 5
5. Others – 145

Since Total number of Members are EXACTLY 200, FLOURA FAUNA Limited Can Convert into Private Company subject to other provisions of the act. Further there is no need to reduce number of members also as total members does not exceed 200.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(RTP May'24)**

New Private Ltd. is a company registered under the Companies Act, 2013 with a paid -up share capital of Rs. 70 lakh and turnover of Rs. 30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the New Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is Rs. 15 crore and the capital is same as Rs. 70 lakh?

Answer:

PROVISION:

Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company -

a. paid-up share capital of which does not exceed 4 crores rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and

b. turnover of which as per its last profit and loss account does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

- ✓ a holding company or a subsidiary company;
- ✓ a company registered under section 8; or
- ✓ a company or body corporate governed by any special Act.

ANALYSIS AND CONCLUSION:

1. In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid-up share capital of Rs. 70 lakh and having turnover of Rs. 30 crore.
   Since both the criteria of share capital not exceeding Rs. four crores and second criteria of turnover not exceeding forty crores is met it can avail the status of small company.
2. If the turnover of the company is Rs. 15 crore, then both the criteria will be fulfilled and New Private Ltd. can avail the status of small company.

Question 2. **(RTP May'24)**

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

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.

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?

Answer:

(i) PROVISION:

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 4 crore 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 40 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.

ANALYSIS AND CONCLUSION:

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 totaling ₹ 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) PROVISION:

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.

ANALYSIS AND CONCLUSION:

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.

Question 3. **(MTP May'24)**

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

Answer:

PROVISION:

According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is -

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or
(C) an investing company or the venturer of the company;

ANALYSIS AND CONCLUSION:

In the given Question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company, though being a related parties.

Alternate Answer

PROVISION:

According to section 2(76)(viii)(B) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is a subsidiary of a holding company to which it is also a subsidiary.

However, Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

ANALYSIS AND CONCLUSION:

In the given Question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the mentioned Notification, clause (viii) shall not apply with respect to section 188 to a private company. Therefore, D Private Limited and E Private Limited are not related parties for the purpose of section 188.

Question 4. **(MTP SEPT'24)**

MNP Limited is a registered public company having the following:

i	Directors and their Relatives	18
ii	Employees	26
iii	Ex-Employees (Shares were allotted during employment)	15
iv	Members holding shares jointly (7 x 2)	14
v	Other Members	137

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

i. Whether the company can be converted into a private company?
ii. Whether existing number of members need to be reduced for the proposed private company?

Answer:

PROVISION:

According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having prescribed minimum paid-up share capital, and which by its articles, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that following shall not be included in the number of members -

(A) persons who are in the employment of the company; and
(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Accordingly, total Number of members in MNP Limited are:

(i)	Directors and their relatives	18
(ii)	Joint shareholders (7x2)	7
(iii)	Other Members	137
	Total	162

1. MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.
2. There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

2. INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERE TO

PRACTICAL QUESTIONS

Question 1.

Yadav dairy products private limited has registered its articles along with memorandum at the time of registration of company in december, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the companies act, 2013 articles may be changed by passing a special resolution only. One of the directors said that they cannot make a provision against the companies act. You are required to advise the company on this matter.

Answer:

PROVISION:

As per Sec. 5 of Companies act, 2013, a company can have entrenchment provisions in its AOA. The Entrenchment provisions can be added in AOA either at the time of Formation of the company or after incorporation by getting approval of ALL MEMBERS in case of Private Company and by Special Resolution in case of Public Company. The entrenchment of Articles gives more protective rights to the members of the company. Further only those matters which requires special resolution can be entrenched by AOA.

ANALYSIS AND CONCLUSION:

In the given case, YADAV Dairy Private Limited, after incorporation want to entrench its AOA with regard to forfeiture of shares, where 90% majority is required to forfeit rather special resolution. Yadav Dairy Private Limited can entrench their AOA, if and only if ALL MEMBERS of the company give their consent to such entrenchment. Further it shall a notice of entrenchment with the ROC.

Question 2.

A group of individuals intend to form a club namely 'budding pilots flying club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under section 8 of the companies act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the companies act.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the companies act, 2013.

Answer:

PROVISION:

1. As per sec. 8 of companies act, 2013, with the prior approval of Central Government, a company can be formed for promotion of charitable objects of Commerce, Art, Science, Sports, Education, Research, Social welfare, Religion, Charity, Protection of environment etc.
2. Further such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

ANALYSIS AND CONCLUSION:

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to

distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (2) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company.
Therefore, the proposal is NOT FEASIBLE.

Question 3.

XY ltd. Has its registered office at mumbai in the state of maharashtra. For better administrative conveniences the company wants to shift its registered office from mumbai to pune (within the state of maharashtra, but from mumbai roc to pune roc). What formalities the company has to comply with under the provisions of the companies act, 2013 for shifting its registered office as stated above? Explain.

Answer:

PROVISION:

The Companies Act, 2013 u/s 13 provides for the process of altering the MOA. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.
Further Shifting of R.O from one ROC to another ROC within the same state is dealt under Sec. 12. As per Sec.12 the company has to pass a special resolution and get the approval of Regional Director in order to shift R.O from One ROC to another ROC within the same state.

ANALYSIS AND CONCLUSION:

In the given case XY Limited, wants to change its R.O from MUMBAI ROC to PUNE ROC. Therefore, since there is a change of ROC and though the change is within the state of Maharashtra, the company has to get the approval of Regional director after passing Special Resolution in order to shift R.O from Mumbai to Pune.

Question 4.

Anushka security equipment's limited is a manufacturer of cctv cameras. It has raised rs. 100 crores through public issue of its equity shares for starting one more unit of cctv camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of cctv camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the companies act allow such change of object. If not, then what advise will you give to company. If yes, then give steps to be followed.

Answer:

PROVISION:

As per Sec. 13 of companies act, Alteration of Memorandum, A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company. Further the details of alteration of Objects clause shall be published in newspapers and shall also be placed on website of the company. The change in Objects clause shall be informed to ROC within prescribed time who shall approve it within 30 days.
Also, for Dissenting shareholders, the company management and controlling shareholders shall give an

option to exit as per directions of securities and exchange board in this regard.

ANALYSIS AND CONCLUSION:

In the given case, Anushka Security Equipment's Limited which is originally formed with the object of manufacturing CCTV Cameras, wishes to change its objects clause so as to include development of mobile applications. This can be done by following the above procedures given u/s 13 of the act.

Question 5.

The object clause of the memorandum of vivek industries limited., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business, the management of the company has decided to take up the business of food processing activity. The company wants to alter its memorandum, so as to include the food processing business in its objects clause. Examine whether the company can make such change as per the provisions of the companies act, 2013?

Answer:

PROVISION:

As per Sec. 13 of companies act, Alteration of Memorandum, A company can alter its objects clause only after passing special resolution by postal ballot. Further the details of alteration of Objects clause shall be published in news papers and shall also be placed on website of the company. The change in Objects clause shall be informed to ROC within prescribed time who shall approve it within 30 days.

Also, for Dissenting shareholders, the company management and controlling share holders shall give an option to exit as per directions of securities and exchange board in this regard.

ANALYSIS AND CONCLUSION:

In the given case, VIVEL INDUSTRIES LIMITED which is engaged in business of real estate, can change its objects clause so as to include FOOD processing by following above procedure.

Question 6.

Manglu and friends got registered a company in the name of taxmann advisory private limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

Answer:

PROVISION:

As per Sec. 16 of companies act, 2013, Rectification of Name by Central Government. If the CG (Now Regional Director), receives an application from the proprietor of trademark that a company is registered with a name which resembles the trademark registered in the name of proprietor, the CG can pass an order on the company to change its name within 3 months of the order by passing an ordinary resolution. However, the application by owner of trademark shall be made to CG within 3 years of formation of company.

ANALYSIS AND CONCLUSION:

In the given case, Manglu and friends registered a company with a name "TAXMANN ADVISORY PRIVATE LIMITED", which is in resemblance of existing trademark. However, since the proprietor of trade mark filed application after 5 Years (i.e., after 3 years of formation), The company is under no obligation to change its name and the company can continue with the name "TAXMANN ADVISORY PRIVATE LIMITED".

Further if the owner of trademark requests company and the company accepts to change the name, it can do so by-passing special resolution as per Sec.13 and with the approval of CG.

Question 7.

Explain in the light of the provisions of the companies act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.

Answer:

In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

a. The subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company,
b. The subsidiary company holds such shares as a trustee, or
c. The subsidiary company was a shareholder in the holding company even before it became its subsidiary.

Question 8.

Parag constructions limited is a leading infrastructure company. One of the directors of the company mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor firozbhai. Mr. Parag signed partnership deed with firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

Answer:

PROVISION:

As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

ANALYSIS AND CONCLUSION:

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(RTP Sept'24)**

Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

1. If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
2. In case Priya withdraws her nomination as a nominee to the OPC, whether Prashant can appoint his minor son Rushang as the nominee of the OPC?

Answer:

1. According to Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a OPC.
   In the given question Priya is an Indian citizen and a resident of India.
   Thus, if Priya is able to maintain her Indian citizenship status in India after moving abroad then she can remain as nominee in OPC of Prashant irrespective of her residential status.
2. The memorandum of OPC shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.
   In the light of the above provision, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Prashant cannot appoint his son Rushang as a nominee to his OPC.

Question 2. **(MTP JAN'25)**

Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th march 2018, it came to the knowledge of the central government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the companies act, 2013. Describe what powers can be exercised by the central government against the alfa school, in such a case?

Answer:

PROVISION:

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest. Further on revocation of license, the company may be wound-up or amalgamated with another sec.8 company having similar objectives.

ANALYSIS AND CONLUSION:

In the given case, Since ALFA SCHOOL, a sec. 8 company, has violated its objects clause and hence the central government can revoke the license granted to the school and may order to wind up or amalgamate with another sec. 8 company having similar objectives.

Question 3. **(MTP SEPT'24)**

Shri laxmi electricals ltd. (S) is a company in which hanuman power suppliers limited (H) is holding 60% of its paid up share capital. One of the share holder of H made a charitable trust and donated his 10% shares in h and in Rs 50 crores to the trust. He appoint s as the trustee. All the assets of the trust are held in the name of s. Can a subsidiary hold shares in its holding company in this way?

Answer:

PROVISION:

As per Sec.19 of companies act 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

However, in the following cases a subsidiary can hold shares in Holding company:

a. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company (Can Participate in Voting) or
b. Where the subsidiary company holds such shares as a trustee (Can Participate in Voting) or
c. Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. (No Voting rights)

ANALYSIS AND CONCLUSION:

In the given case, SHRI LAXMI ELECTRICALS LIMITED (S LTD) is a subsidiary company of HANUMAAN POWER SUPPLIERS LIMITED (H LTD). Whereas, S LTD is holding Shares in H LTD on behalf of one of the shareholders, as a trustee. Hence it is not violation of Sec. 19 of the companies act 2013. So, S LTD can continue to hold such shares in H LTD in the capacity of trustee.

Question 4. **(MTP SEPT'24)**

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of constructive notice will apply.

Answer:

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

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 to 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 is opposite to the 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 safeguard against the possibility of abusing the doctrine of constructive notice.

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

i. Knowledge of irregularity: In case an '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.

ii. Negligence: If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

iii. 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.

Question 5. **(MTP MAY'24, MTP JAN'25)**

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

Answer:

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

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

Question 6. **(RTP MAY'24)**

Mr. Kaushal is a Chartered and an MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Kaushal can be classified as the Promoter of XYZ Limited? Examine the same under the provisions of the Companies Act, 2013.

Answer:

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

a. Who has been named as such in a prospectus or is identified by the company in the annual return; or

b. Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

c. In accordance with whose advice, directions or instructions the Board of Directors of the Company is accustomed to act.

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

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

Question 7. **(MTP MAY'24)**

Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

Answer:

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

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

Question 8. **(MTP MAY'24)**

Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013?

Answer:

1. As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants:
   (a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or
   (b) direct that liability of the members shall be unlimited; or
   (c) direct removal of the name of the company from the register of companies; or
   (d) pass an order for the winding up of the company; or
   (e) pass such other orders as it may deem fit:
2. Provided that before making any order under this sub-section,—
   a. the company shall be given a reasonable opportunity of being heard in the matter; and
   b. the Tribunal shall take into consideration the transactions entered into by the company.
3. Also the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

ILLUSTRATIONS

Illustration 1.

Company's prospectus was given to a solicitor of the company and he forwarded it to one of his clients despite it was marked strictly private, who applied for share based upon same. Later filed suit for damages. Is this communication amount to an issue to the public and whether the provisions of the act attracted?

Answer –

No, this did not amount to an issue to the public and accordingly the provisions of the Act relating to liability for omissions, etc. not attracted.

Illustration 2.

In case of super-fix-it limited, some of members of a company offer part of their holding of shares to the public (in consultation with board of directors), wherein company took all actions on their behalf for carrying out the transaction. Company incur the expense of ₹ 3.2 lakh to carrying out such transactions, can company recover the amount so incurred in full from such members?

Answer –

Yes, members who are offer whole or part of their holding of shares to the public, in consultation with board of directors, shall authorised the company to take all actions on their behalf for carrying out the transaction, and bound to reimburse the company for all expenses made by it on this matter

Illustration 3.

All the statements contained in a prospectus issued by a company were literally true. It was also stated in the prospectus that the company had paid dividends for a number of years but there was no disclosure regarding the fact that the dividends were paid out of realised capital profits and not out of trading profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars.

Answer –

The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.

Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Illustration 4.

A prospectus issued by a company contained certain mis-statements. On becoming aware of the fact regarding mis-statements in the prospectus, one of the experts anilesh who had earlier given his consent, forthwith gave a reasonable public notice stating that the prospectus was issued without his knowledge and consent. Is it possible for anilesh to escape liability for mis-statement in the prospectus?

Answer –

Section 35 (2) states that no person shall be liable under Sub-section (1) if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he

forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
The case of Anilesh is covered under the above exception provided by Sub-section (2) and therefore, he will escape liability for mis-statement in the prospectus.

Illustration 5.

An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under the circumstances?

Answer –

Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements.
Certain situations when a director will not incur any liability for mis-statements in a prospectus are covered under exceptions provided by Section 35 (2) but no such exception specifies that relying on the statements prepared the promoters of the company is a valid ground for a director to escape liability for mis-statement.

Illustration 6.

The board of directors of a company decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the articles of association of the company permit only 3% commission. The board of directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the board of directors valid under the companies act, 2013?

Answer –

Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.
Therefore, the decision of the BOD to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the AOA. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the AOA.

Illustration 7.

Ruhi and her brother sohit were offered jointly 1000 equity shares of ₹ 100 each by soumya software private limited under the issue of shares on private placement basis. Offer-cum-application letter addressed to both containing their names as "ms. Ruhi, mr. Sohit". From whose account the company is required to take subscription money for 1000 equity shares?

Answer

According to the first Proviso of Rule 14 (5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. Since Ruhi's name appears first in the application, therefore the subscription of ₹ 1,00,000 shall be payable by her from her account. It is obligatory for the company to ensure that the money is paid from her bank account and not from the bank account of her younger brother Sohit.

PRACTICAL QUESTIONS

Question 1.

The board of directors of chandra mechanical toys limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the companies act, 2013.

Answer:

PROVISION:

As per provisions of companies act, 2013, the following matters shall be stated in prospectus:

1. Every prospectus issued shall be dated and signed and
2. Shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.
3. Prospectus shall make a declaration about the compliance of the provisions of this Act and
4. A statement to the effect that nothing in the prospectus is contrary to: (Declaration)
   a. The provisions of Companies Act, 2013.
   b. The Securities Contracts (Regulation) Act, 1956 and
   c. The Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

ANALYSIS AND CONCLUSION:

Accordingly, the Board of Directors of Chandra Mechanical Toys Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

Question 2.

Unique builders limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the companies act,2013.

Answer:

RELEVANT PROVISION:

As per Sec. 40 regarding payment of underwriting commission, the provisions are as below:

1. A company may pay commission to any person in connection with the subscription to its securities subject to such conditions.
2. CONDITIONS:
   a. The payment of such commission shall be authorized by articles of association.
   b. The commission may be paid out of proceeds of the issue or the profit of the company or both.
3. Following is the rate of commission to be paid to the person:
   a. FOR SHARES: Shall not exceed 5% of the issue price, or a rate authorised by the articles, whichever is less.
   b. FOR DEBENTURES: shall not exceed 2.5% of the issue price, or as specified in the company's ARTICLES, whichever is less.
4. No Commission is payable to underwriters in respect of securities that are not offered to public.

ANALYSIS AND CONCLUSION:

In the given case, UNIQUE BUILDERS LIMITED decided to pay 2.5% of the value of debentures as commission to underwriters. Since the AOA of the company limits the commission at 2%, the company cannot pay 2.5% Commission is invalid and ultra vires the Articles of Association.

Further the mode of payment of commission can be either in cash or other than cash, as there is no express restriction in this regard. Therefore, the company decision to pay consideration in the form of Flats is permitted.

Question 3.

PQR limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers. Before allotment under this offer letter company issued another private placement offer letter to another 155 persons in their individual name for issue of its debentures. Being a public company can it issue securities in a private placement? Is it in compliance with provisions related to private placement or should these offers be treated as public offers?

What if the offer for debentures is given after allotment of equity shares but within the same financial year?

ANSWER:

RELEVANT PROVISION:

As per Sec. 42 of companies 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. The persons to whom the private placement offer is made are known as "Identified Persons". The following points shall be kept in mind relating to private placement:

1. The total number of identified persons shall not exceed Two Hundred in a financial year.
2. Further The limit of Two Hundred shall be counted separately for each kind of security that is equity share, preference share or debenture.
3. While Counting the Limit of Two Hundred, Qualified Institutional buyers (QIB) and Employees who are offered ESOP, shall be excluded from Counting.
4. A company can offer securities under private placement only if allotment procedure under previous offer is completed or has been withdrawn or abandoned.

ANALYSIS AND CONCLUSION:

1. In the Given Case, PQR LIMITED offered Equity shares under private placements to 51 Persons (i.e.,55 minus 4 QIB's). Since the offer is made to Less than 200 Persons and it is NOT VIOLATIVE of provisions of companies act.
2. Further the company offered Debentures to another 155 persons in their individual names before allotment of previous offer of equity shares. Therefore, offer of debentures under private placement is VIOLATIVE of provisions of companies act, 2013, as the offer is made before completion of existing offer for allotment.

Suppose, if the offer for debentures to 155 persons, is made after completion of allotment of equity shares, then it is NOT A VIOLATION of provisions. The Limit of 200 Persons in a financial year shall be counted for each type of securities i.e., Equity shares, preference shares and debentures. Therefore, the first offer of equity shares to 51 Persons and Subsequent offer of debentures to 155 Persons shall not be clubbed for counting of 200 In a Financial Year.

Question 4.

The board of directors of reckless investments ltd. Have allotted shares to the investors of the company without issuing a prospectus with the registrar of companies, mumbai. Explain the remedy available to the investors in this regard.

Answer:

RELEVANT PROVISIONS:

As per Sec. 23 of the companies act, 2013, a company can issue securities to public only after registering a valid prospectus with ROC. The Prospectus shall contain all the information and reports as required u/s 26.

ANALYSIS AND CONCLUSION:

In the given case, Board of Directors of RECKLESS INVESTMENTS LIMITED have allotted shares to investors (Assumed Public issue) without issuing and registering the prospectus with the ROC. Hence the allotment of shares is VOID. The company has to refund entire money received and will be liable for penal provisions under the act.

Question 5.

An allottee of shares in a company brought action against a director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the director liable under the circumstances? Decide referring to the provisions of the companies act, 2013.

Answer:

RELEVANT PROVISIONS:

1. Mis- statement of prospectus is a serious offence which attracts criminal liability u/s 34 and / or civil liability u/s 35. As per Sec. 34, Every person who authorises the issue of such prospectus shall be liable under section 447, if the prospectus authorised by them is containing any statement or omission, which is untrue or mis leading. Further u/s.35, a DIRECTOR of a company Shall be liable to pay compensation to every person who has sustained such loss or damage which is in addition to punishments under the act.
2. The director will not be liable if he proves that:
    a. He withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent or
    b. That the prospectus was issued without his knowledge or consent and gives a public notice the prospectus was issued without his consent.

ANALYSIS AND CONCLUSION:

In the given case, the director of the company is LIABLE for consequences of False statements in the prospectus. Because he has not withdrawn his consent to prospectus and not made any public announcement. Therefore, the director is deemed to have the knowledge of misstatement in the prospectus issued by promoters of the company. Accordingly, the action taken by Allottee of shares is VALID.

Question 6.

Sudarshan exports limited was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in a.p. State. The prospectus issued by the company contained some important extracts of the expert's report and number of trees in a.p. State. The report was found untrue. Mr. Alok purchased the shares of sudarshan exports limited on the basis of the expert's

report published in the prospectus. Will mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the companies act, 2013.

Answer:

RELEVANT PROVISION:

Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an EXPERT shall be liable to pay compensation to the person who has sustained such loss or damage.

ANALYSIS AND CONCLUSION:

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Limited on the basis of the expert's report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case. Further, Section 35 also mentions punishment prescribed by section 36 i.e., punishment for fraud under section 447.

CIRCUMSTANCES WHERE EXPERT IS NOT LIABLE:

An Expert shall not be liable if he proves:

a. He withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent or
b. That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent. [SEC .35(2)]
c. An expert will not be liable in respect of any statement not made by him in the capacity of an expert. [E.g., Fake Reports or statements]

Question 7.

Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013.

The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters."

Answer:

RELEVANT PROVISION:

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

ANALYSIS AND CONCLUSION:

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e., Deal & Co.) is invalid.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(QP SEPT'24)**

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 Rs.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 Rs.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?

Answer:

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 Rs. 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.

Question 2. **(QP MAY '24)**

Referring to the provisions of the Companies Act, 2013, answer the following queries:

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?

Explain the consequences of non-allotment of shares within the stipulated timeline.

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?

Answer:

1. 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.
2. 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.
3. 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.

Question 3. **(MTP SEPT'24)**

Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India.

As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India.

Answer:

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

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

4. SHARE CAPITAL AND DEBENTURES

ILLUSTRATIONS

Illustration 1.

Can a company have only preference share capital?

Answer –

It may be noted that while a company may have only equity share capital but it cannot have only preference share capital. This is because preference shareholders have certain 'preferential rights' over the equity shareholders.

Thus, in the absence of equity share capital, there cannot be preferential share capital (Bihar State Financial Corporation vs. CIT Bihar (1976))

Illustration 2.

Where a shareholder paid the first two calls after a great delay and neglected to pay the third call and the directors, being annoyed, and called upon him to pay the whole amount due. In your opinion is call valid?

Answer –

A call can't be made on some of the members only, unless they constitute a separate class of shareholders, hence such a call shall be invalid. (Galloway v Halle Concerts Society, (1915) 2 Ch 233)

Illustration 3.

Moon Star Machineries Limited is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member even if no part of that amount has been called up by it. 'Anand', a shareholder, deposits in advance the remaining amount due on his partly paid-up shares without any calls being made by the company. Advise the company about the validity of accepting money in advance.

Answer –

In view of the authorisation given by the Articles, Moon Star Machineries Limited is permitted to accept the advance amount received on unpaid calls from Anand. In other words, this is a valid transaction.

Illustration 4.

What shall be length of period specified by notice of offer of further issue for giving acceptance?

Answer –

Notice of offer of further shares shall specify the time period within which the offer must be accepted. The time period should not be less than 15 days or such lesser number of days as may be prescribed but not exceeding 30 days from the date of the offer

Note – Rule 12A inserted in the Companies (Share Capital and Debentures) Rules, 2014, that provides the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer.

PRACTICAL QUESTIONS

Question 1.

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2019 new shares were offered to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.

Answer:

PROVISION:

As per Sec. 62 of companies act, 2013, If a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered first to Existing Shareholders subject to the following conditions:

1. The offer shall be made uniformly to all the shareholders without any reservation for a particular member, in proportion to their existing shareholding.
2. The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 DAYS and not exceeding 30 DAYS from the date of the offer. If No response is obtained from such ESH – it is deemed that the offer is declined by him.
3. The Shareholder in respect of whom the rights offer is made is deemed to have the right of renouncing his right in favour of another person in writing. However, if AOA of a company prohibits renouncement's then there is no renouncement option.

ANALYSIS AND CONCLUSION:

In the given case the BOD of SV Company Limited Proposed a right share offer to existing shareholders except VRS Company Limited on the ground that it is already holding high percentage of shares.

The offer and contention made by BOD is INVALID. As VRS Company Limited is equally eligible participate in the rights offer along with other existing shareholders.

Question 2.

The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered. (Direct Theory Question)

Answer:

As per Sec. 61 of companies act, 2013, A limited company having a share capital may alter its capital in memorandum subject to AOA in GM's in the following ways:

1. INCREASE THE AUTHORISED CAPITAL: Increase its authorised share capital by such amount as it thinks expedient (necessary).
2. CONSOLIDATE: Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. However, if consolidation or division is resulting in change of voting powers of shareholders then it shall be approved by the Tribunal on an application made in the prescribed manner;
3. CONVERSION TO STOCK: convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

4. SPLIT: sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
5. CANCEL OF SHARES: cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

NOTE: Further the cancellation of shares shall not be deemed to be a reduction of share capital.

INFORM TO ROC: A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

Question 3.

Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?

Answer:

RELEVANT PROVISION:

As per Section. 56 of the Companies Act, 2013 every company shall deliver the certificates of all shares transferred within a period of 1 MONTH from the date of receipt of the INSTRUMENT OF TRANSFER.

If a company fails to deliver the share certificate then:

1. The company shall be punishable with fine varying from Rs. 25,000 to Rs. 5,00,000/- and
2. Every officer of the company who is in default shall be punishable with fine with the minimum of Rs. 10,000/- extending to Rs. 1,00,000/-.

Further the aggrieved person can file an appeal in a court falling within the jurisdiction of the registered office of the company.

ANALYSIS AND CONCLUSION:

In the given case, the company and officers in default will be liable to bear the above consequences. Further Mr. Ramesh has filed a petition in New Delhi Court which is outside the jurisdiction of Registered Office of the company (i.e., Mumbai) and Hence Delhi court cannot take any action in this regard.

Question 4.

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs.10,00,000 (10,000 preference shares of Rs.100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

Answer:

RELEVANT PROVISION:

Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may—

1. SPECIAL RESOLUTION: The consent of the holders of 3/4th in VALUE of such preference shares, and
2. APPROVAL OF NCLT: The approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares. On Further issue of redeemable preference shares, the unredeemed shares are deemed to be redeemed.
3. DISSENTINENT SHAREHOLDERS FOR FURTHER ISSUE: Where any existing preference shareholders who have not consented for such issue of fresh redeemable shares, the TRIBUNAL CAN ORDER that the unredeemed preference shares are deemed to be redeemed and the company will redeem all the existing preference shares from the proceeds of fresh issue of preference shares.
4. NO INCREASE / REDUCTION OF CAPITAL: It is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or a reduction, in the share capital of the company.

ANALYSIS AND CONCLUSION:

1. In view of the above, Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs.10,00,000.
2. For this purpose, it shall obtain the consent of the holders of 3/4th in value of such preference shares and also seek approval of the Tribunal by making a petition.
3. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares.
4. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.
5. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Question 5.

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager Mr. Surya nayan, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 40,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer:

RELEVANT PROVISION:

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

1. The employee must not be a director or Key Managerial Personnel.
2. The amount of such loan shall not exceed an amount equal to 6 months' salary of the employee.
3. The loan must be extended for subscribing fully paid-up shares.

ANALYSIS AND CONCLUSION:

In the given case OLAF Limited (Public Company) which is a subsidiary of PQR Limited gives a loan amount of Rs.4,00,000/- to an employee to purchase the shares of its own company.

Since the amount of loan exceeds 6 months' salary of HR Manager (i.e.,40,000 x 6M = 2,40,000/-), The company (OLAF Limited) has VIOLATED the provisions of Sec. 67 and IS INVALID.

Moreover, the loan give to employee can be used only to subscribe Fully Paid shares and NOT FOR PARTLY PAID SHARES.

Question 6.

Shilpi developers india limited owed to sunil ₹ 10,000. On becoming this debt payable, the company offered sunil 100 shares of ₹ 100 each in full settlement of the debt. The said shares were allotted to sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the companies act, 2013.

Answer:

RELEVANT PROVISION:

Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

ANALYSIS AND CONCLUSION:

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Question 7.

What are the provisions of the companies act, 2013 relating to the appointment of 'debenture trustee' by a company? Whether the following can be appointed as 'debenture trustee':

1. A shareholder who has no beneficial interest.
2. A creditor whom the company owes ₹ 499 only.
3. A person who has given a guarantee for repayment of amount of debentures issued by the company?

Answer:

RELEVANT PROVISION:

a. As per Sec. 71 of Companies Act, 2013, If a Company want to issue debentures to more than 500 persons including members of the company, Then Prospectus for public offer can be issued only if the company appointed one or more debenture trustee and prescribe governing rules and regulations.
b. A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
c. As per Rules, the following Persons cannot be appointed as Debenture trustees:
   - ✓ Beneficially holds shares in the company
   - ✓ Is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company
   - ✓ Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.
   - ✓ Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.

- ✓ Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
- ✓ Has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.
- ✓ is a relative of any promoter or any person who is in the employment of the company as director or key managerial personnel

ANALIS AND CONCLUSION:

Thus, based on the above provisions answers to the given questions are:

1. A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
2. A creditor whom company owes Rs.499 cannot be so appointed. The amount owed is immaterial.
3. A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Question 8.

Mr. Nilesh has transferred 1000 equity shares of perfect vision private limited to his sister ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to mr. Nilesh or ms. Mukta within the prescribed period. Discuss as per the provisions of the companies act, 2013, whether aggrieved party has any right(s) against the company?

Answer:

RELEVANT PROVISION:

As per Sec. 58 of Companies Act, 2013, If a public company without sufficient cause refuses to register the transfer of securities within a period of 30 DAYS from the date of instrument of transfer or the intimation of transmission, is delivered to the company the concerned person can APPEAL TO THE TRIBUNAL within:

1. REFUSAL INTIMATED: within a period of 60 DAYS of such refusal or
2. NO INTIMATION OF REFUSAL: within 90 DAYS of the delivery of the instrument of transfer or intimation of transmission.

The Tribunal after hearing the parties, either dismiss the appeal, or by order—

a. DIRECT - REGISTER THT TRANSFER: direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or
b. RECTIFICATION OF REGISTER: Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

ANALYSIS AND CONCLUSION:

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can make an appeal before the tribunal within 60 days from the date on which instrument of transfer is to the company.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1: **(MTP SEPT '24)**

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

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.

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?

1. Whether Dolls Toys Limited is permitted to accept deposits from Public other than its members?
2. Whether Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

Answer:

1. PROVISION: 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 Rs.100 crore or turnover of not less than Rs.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'.

   ANALYSIS AND CONCLUSION:

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

   Since at least one condition is satisfied that is net worth is Rs.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, Dollys Toys Limited is an eligible company and hence can accept deposits from public other than its members.

2. PROVISION: 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:

   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

   such deposits are repayable only on or after three months from the date of such deposits or

renewal.

ANALYSIS AND 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 Rs.310 crore therefore the company can accept the deposits to the extent of Rs.31 crore only.

Question 2: **(MTP MAY'24)**

SAB Health Products Limited issued equity shares worth Rs.5,00,00,000 (5,00,000 equity shares of Rs.100 each) and it was fully subscribed and partly paid at Rs.50 each. The company made a call to all its subscribers to pay a sum of Rs.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?

Answer:

1. PROVISION: 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.

   ANALYSIS AND CONCLUSION:

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

   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.

2. 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.

Question 3: **(MTP JAN'25)**

Trisha Data Security Limited (listed on Stock Exchange) was incorporated on 1st August, 2019 with a paid- up share capital of Rs. 200 crores. Within this small time of 1 year it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.

Answer:

PROVISION:

As per Sec. 54 of companies act, 2013, Sweat equity shares mean such equity shares as are issued by a company to its directors or employees:

1. At a discount or
2. For consideration, other than cash (Non-Cash).

For providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Condition for Issue of Sweat Equity Shares:

1. The issue is authorised by a special resolution passed by the company.
2. The rights, limitations, restrictions and provisions related to sweat equity shareholders shall *Pari Passu* with other equity shareholders.
3. In case of Listed Companies, they have to comply with SEBI guidelines.

ANALYSIS AND CONCLUSION:

So, the contention of the Friend of CEO that a company cannot issue sweat equity shares up to 2 years is INVALID. So, DATA LIMITED, A listed company can proceed to issue sweat equity shares in accordance with the provisions of Sec. 54 of companies act, 2013.

There is no such minimum time limit of 2 years in operations is specified under Section 54.

Question 4: **(MTP SEPT'24)**

Walnut Limited has an authorized share capital of 2,00,000 equity shares of Rs. 100 per share and an amount of Rs. 2 crores in its Share Premium Account as on 31-3-2020. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

Answer:

The provisions related to Securities premium account are contained in Sec. 52 of companies act, 2013 which are as below:

1. When a security of a given face, value is issued at price higher than its face value, the issue is called as issue at premium and the differential amount as premium.
2. The Premium received by the company on those shares shall be transferred to a securities premium account.
3. The securities premium account can be utilised for:
   a. towards the issue of 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 (Buy Back).
4. Prescribed Class of Companies are permitted to apply Securities Premium Account: The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under Section 133:
   a. in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares or
   b. in writing off the expenses of or the commission paid, or discount allowed on any issue of equity shares of the company; or

c. for the purchase of its own shares or other securities under section 68.

Question 5: (MTP MAY'24)

Shree ltd. Is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its balance sheet as at march 31, 2020 shows the following position:

1. Authorized share capital (25,00,000 equity shares of face value of rs. 10/- each) rs. 2,50,00,000
2. Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of rs.10/- each, fully paid-up) rs. 1,00,00,000
3. Free reserves rs. 3,00,00,000

The board of directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The board wants to know the conditions and the manner of issuing bonus shares under the provisions of the companies act, 2013. Discuss.

Answer:

RELEVANT PROVISION:

The following are the conditions for issue of Bonus Shares:

1. SOURCE: A Company can issue fully paid bonus shares only out of the following sources:
   a. Its free reserves.
   b. The securities premium account or
   c. The capital redemption reserve account.
2. PROHIBITED TO USE REVALUATION RESERVE: Bonus shares shall not be made by capitalising reserves created by the revaluation of assets.
3. PROCEDURAL CONDITIONS:
   a. Issue of Bonus shares shall be authorised by its articles.
   b. Shall be approved by BOD. Further Once after BOD made recommendation, they cannot withdraw the same.
   c. Shall be approved by Shareholders at General Meeting by passing an ordinary resolution.
   d. The company has not defaulted in payment of interest or principal in respect of fixed deposits or debentures/bonds.
   e. The Company has not defaulted in respect of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
   f. The existing partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
   g. The bonus shares shall not be issued in lieu of dividend.

CONCLUSION:

To issue bonus shares by SHREE Limited, the company will need reserves of Rs.50,00,000 (half of Rs.1,00,00,000), which is available with the company and Hence the company can proceed to issue bonus shares in accordance with the above provisions.

Question 6: (RTP JAN'25)

XYZ Tech Solutions Limited is a growing technology company that has seen significant contributions from its employees and directors in the development of a ground breaking software product. To reward these key contributors, the board proposed issuing sweat equity shares to certain employees and directors. XYZ Tech Solutions Limited already has issued ordinary equity shares but has never issued sweat equity shares before.

The company has a paid up equity share capital Rs.20 crore. The company has proposed to issue sweat

equity shares worth Rs.4 crore of face value. The company's board has drafted a special resolution outlining the proposed issuance of sweat equity shares and including specific details, such as the number of shares, the current market price, consideration (if any), and the classes of directors and employees eligible to receive the shares.

The company has approached you to advise them about the issue of the said sweat equity shares, in line with the provisions of the Companies Act, 2013.

Answer:

According to section 54(1) of the Companies Act, 2013, a company may issue sweat equity shares if all of the following conditions are fulfilled:

a. Share of that class must be already issued
b. Issue is authorised by a special resolution passed by the company;
c. Resolution specifies the details regarding the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

The special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing.

During a year, the maximum amount/limit for which sweat equity shares can be issued is higher of:

a. 15% of the existing paid up equity share capital or
b. Shares of the issue value of rupees 5 crore.

The issuance of sweat equity shares (cumulative, including all previous issues, if any) shall not exceed 25% of the paid-up equity capital of the company at any time.

In the given question, the company has proposed to issue sweat equity shares to the tune of Rs.4 crore. However, the maximum limit to which it can issue such shares is- Higher of:

a. 15% of the issued paid up share capital, i.e. Rs.3 crore, or
b. 5 crore

Thus, company can issue sweat equity shares to the tune of Rs.5 crore. However, the company cannot issue such shares more than 25% of the paid-up equity capital= 25% of Rs.20 crore= Rs.5 crore.

Hence, the company can issue sweat equity shares of Rs.4 crore.

Question 7: (MTP SEPT'24)

MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'.

The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013.

Answer:

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

Provided that—

a. any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
b. any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,shall not be treated as free reserceves.

Question 8: **(MTP MAY'24)**

Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued Rs.1,00,000 convertible preference shares (carrying right to vote) of Rs.100 each and 10,00,000 equity shares of Rs.10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:

a. The provisions of the Companies Act, 2013 are applicable on Cross Limited?

b. XYZ Private Limited is a public company as per the Companies Act, 2013?

Answer:

a. Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.

b. According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.

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

According to section 2(87) of the Companies Act, 2013, "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

- ✓ controls the composition of the Board of Directors; or
- ✓ exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

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

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

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

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

Question 9: **(MTP MAY'24)**

Explain the following as per the provisions of the Companies Act, 2013:

a. Abridged Form of Annual Return

b. Signing of Annual Return

Answer:

a. Abridged Form of Annual Return

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

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

b. Signing of Annual Return

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

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

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

Question 10: (MTP MAY'24)

"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.

Answer:

PROVISION:

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.

ANALYSIS AND CONCLUSION:

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.

5. ACCEPTANCE OF DEPOSITS BY COMPANIES

DESCRIPTIVE QUESTIONS

Question 1.

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

Answer:

1. Any amount received in the course of, or for the purposes of, the business of the company:
   a. BUSINESS ADVANCES:
      - ✓ An advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of 365 DAYS from the date of acceptance of such advance:
      - ✓ However, in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 DAYS shall not apply.
   b. ADVANCE FOR IMMOVABLE PROPERTY: An advance received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.
   c. SECURITY DEPOSIT FOR GOODS OR SERVICES: as security deposit for the performance of the contract for supply of goods or provision of services;
   d. ADVANCES FOR LONG TERM PROJECTS: as advance received under long term projects for supply of capital goods.
   e. ADVANCE FOR AMC CONTRACTS: An advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.
   f. SECTORIAL PERMITTED ADVANCES: An advance received and as allowed by any sectorial regulator or in accordance with directions of Central or State Government.
   g. ADVANCES FOR SUBSCRIPTIONS: An advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

NOTE: However, it is clarified that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

DEEMED DEPOSIT: Further, by way of Explanation it is clarified that for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund. (Accordingly, Interest is payable)

Question 2.

Discuss the following situations in the light of 'deposit provisions' as contained in the companies act, 2013 and the companies (acceptance of deposits) rules, 2014, as amended from time to time.

1. Samit, one of the directors of zarr technology private limited, a start-up company, requested his

close friend ritesh to lend to the company ₹ 30.00 lakh in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.

2. Polestar traders limited received a loan of ₹ 30.00 lakh from rachna who is one of its directors. Advise whether it is a deposit or not.
3. City bakers limited failed to repay deposits of ₹ 50.00 crore and interest due thereon even after the extended time granted by the tribunal. Is the company or swati, its officer-in-default, liable to any penalty?
4. Shringaar readymade garments limited wants to accept deposits of ₹ 50.00 lakh from its members for a tenure which is less than six months. Is it a possibility?
5. Is it in order for the diamond housing finance limited to accept and renew deposits from the public from time to time?

Answer:

1. PROVISION: In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees 25 lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

   ANALYSIS AND CONCLUSION: In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of 6 years from the date of its issue.

   In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of Rs. 30.00 lacs SHALL NOT be considered as deposit.
2. PROVISION: In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

   ANALYSIS AND CONCLUSION: In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

   If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.
3. By not repaying the deposit of Rs. 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

   Punishment for the company:

   City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees One crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to Rupees Ten crores.

   Punishment for officer-in-default:

   Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to Seven years and with fine which shall not be less than rupees Twenty Five lakhs but which may extend to rupees Two crores.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

4. PROVISION:

According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than 6 months. Further, the maximum period of acceptance of deposit cannot exceed 36 six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than Six months subject to the conditions that:

a. such deposits shall not exceed 10%. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
b. such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

ANALYSIS AND CONCLUSION:

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than 6 months.

It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after 3 months from the date of such deposits.

5. PROVISION: According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

ANALYSIS AND CONCLUSION: In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it.

In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Question 3.

ABC limited having a net worth of ₹ 120 crore wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'.

Answer:

ELIGIBLE PUBLIC COMPANY: A public company is 'eligible' to accept deposits from the public at large only if it complies with the following conditions:

1. It should be a public company.
2. It should have:
   a. Net worth of Not Less than Rs. 100 crores or

b. A turnover of Not Less than Rs. 500 crores.

3. It has obtained the prior consent by means of a special resolution passed in general meeting.
4. The special resolution has been filed with the Registrar of Companies.

Note: An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c). [(Proposed Deposits plus existing debts) ARE LESS THAN OR EQUAL TO (PUC plus Reserves and Surplus)].

Further 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 10%. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ANALYSIS AND CONCLUSION:

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'.

Thus, ABC 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.

Question 4.

Define the term 'deposit' under the provisions of the companies act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

a. ₹ 5,00,000 raised by rishi confectionaries limited through issue of nonconvertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the securities and exchange board of india.
b. ₹ 2,00,000 received by raja yarns limited from its employee mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.
c. ₹ 3,00,000 received by a private company from one of the relatives of a director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

Answer:

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

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

a. Rs. 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).
b. Rs. 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of Rs. 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of Rs. 1,50,000.
c. Rs. 3,00,000 received by a private company from one of the relatives of a Director. When the

relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

Question 5.

State, with reasons, whether the following statements are 'true or false'?

a. ABC private limited may accept deposits from its members to the extent of ₹ 50.00 lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 50.00 lakh.

b. A government company, which is eligible to accept deposits under section 76 of the companies act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

Answer:

a. PROVISION: As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

It is provided that a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

CONCLUSION: Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of Rs. 50.00 lakh is 'true'.

b. PROVISION: As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.

CONCLUSION: Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

Question 6.

Answer the following citing relevant provisions:

a. Prayas electricals limited having paid-up capital of ₹ 1 crore availed a term loan of ₹ 10,00,000 from beta bank limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

b. Eklavya publishing company limited facing acute cash crunch wants to utilise a portion of 'deposit repayment reserve account' to pay off its short-term creditors who are pressing hard for repayment of ₹ 20,00,000. Is it justified to use funds lying in 'deposit repayment reserve account' in this manner?

c. Sanjiv is a shareholder in utsah textiles private limited holding 10,000 shares of ₹ 10 each. His wife sneha and his three sons aayush, pranav and himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, sanjiv wants to deposit rs. 1,00,000 for 36 months jointly with his wife and three sons. Whether utsah textiles private limited can accede to the request of sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.

Answer:

a. In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of Mr. Sambhav that the term loan of ₹ 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

b. Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits. Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

c. Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three. In view of this provision, Sanjiv can deposit ₹ 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

Question 7.

Shubhra chemicals private limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account. What are the conditions it must fulfill before such acceptance?

Answer:

RELEVANT PROVISION:

According to first proviso to Rule 3 (3), a private company may accept from its member's monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

a. which is not an associate or a subsidiary company of any other company;

b. the borrowings of such a company from banks or financial institutions or anybody-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is less; and

c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

ANALYSIS AND CONCLUSION:

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. (RTP MAY'24)

NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was Rs.90 crore and turnover for the year 2022-23 was Rs.510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company.

Furthermore, the company has accepted a loan of Rs.1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?

Answer:

a. As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly:

- ✓ It should be a public company.
- ✓ It should have net worth of minimum Rs.100 crore or a turnover of minimum Rs.500 crore.
- ✓ It has obtained the prior consent by means of a special resolution passed in general meeting.
- ✓ The special resolution has been filed with the Registrar of Companies.
- ✓ An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the turnover of NOP Limited is Rs.510 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: 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 deposit cannot exceed thirty-six months.

The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

b. In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.

Question 2. **(MTP MAY'24)**

Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is Rs.5,00,000. Mr. Romit paid to the company Rs.5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)?

Answer:

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

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

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

Question 3. **(MTP MAY'24)**

The Promoters of Green Limited contributed in the form 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?

Answer:

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 Green 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.

6. REGISTRATION OF CHARGES

PRACTICE QUESTIONS

Question 1.

Renuka soaps and detergents limited realised on 2nd may 2019 that particulars of charge created on 12th march, 2019 in favour of a bank were not registered with the registrar of companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th june 2019 instead of 2nd may, 2019? Explain with reference to the relevant provisions of the companies act, 2013.

Answer:

RELEVANT PROVISION:

Charges created on or after 02-11-2018 (i.e. On or after the commencement of the companies (amendment) second ordinance, 2019):

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

b. NOT REGISTERED WITHIN 60 DAYS – ADVALOREM BASIS: If the registration is not made within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of 60 DAYS after payment of prescribed Ad valorem fees.

c. PROCEDURE FOR EXTENSION OF TIME LIMIT: For seeking extension of time, the company is required to make an application to the Registrar. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or Ad valorem fee, as applicable, must also be paid.

ANALYSIS AND CONCLUSION:

Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June 2019 instead of 2nd May 2019, it shall be noted that a period of 60 days has already expired from the date of creation of charge.

However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of 60 days but the company is required to pay ad valorem fees. Since the first 60 days from creation of charge have expired on 11th May 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of 60 days from 11th May, 2019 after paying the prescribed ad valorem fees.

The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Question 2.

Mr. Antriksh purchased a commercial property in delhi belonging to nrt limited after entering into an agreement with the company. At the time of registration, mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of nrt limited is correct?

Answer:

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

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration.

Mr. Antriksh, therefore, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property.

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

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(MTP SEPT '24)**

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 Rs.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:

1. 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?
2. What are the consequences for non-registration of charge on the Naveen Tools Ltd?

Answer:

1. 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.

2. 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.

Question 2. **(RTP JAN'25)**

PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.

After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.

Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013.

Answer:

The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:

a. a company acquiring any property subject to a charge within the meaning of that section; or
b. any modification in the terms or conditions or the extent or operation of any charge registered under that section.

According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with section 77.

According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge as its own. This means that PQR Limited must create a fresh charge over the acquired property and register it with the Registrar of Companies (RoC) as per section 77.

Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge. Hence, the contention of directors of PQR Limited that since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.

Question 3. **(RTP SEPT'24)**

Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM.

It is also provided that by 1st July, 2024, the company had obtained written consent from all members via email, agreeing to hold the AGM at this out-of-state location. As per the Companies Act, 2013, evaluate whether the AGM was validly conducted.

Answer:

Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 AM and 6 PM on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city,

town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, Pran Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (by 1st July, 2024). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

Question 4. **(MTP JAN'25)**

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer:

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

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

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

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

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

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

Question 5. **(MTP SEPT'24)**

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer:

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

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

Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

the debt has been satisfied in whole or in part; or

part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

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

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

Information to affected parties: According to section 83 (2), the Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2) of the Companies (Registration of Charges) Rules, 2014, in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

Question 6. **(MTP MAY'24)**

Explain the meaning of Crystallization of a Floating Charge.

Answer:

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.

Question 7. **(MTP MAY'24)**

Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'.

Answer:

Inspection of Register of Charges and Instrument of Charges

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

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

7.MANAGEMENT & ADMINISTRATION

ILLUSTRATIONS

Illustration 1.

Luxy Hairstyles Private Limited allotted 500 shares in the name of Mr. Zoey's daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the entries to be made in the register of members, since Mila is incompetent to contract in her capacity as minor.

Answer:

Since minors are not competent to enter into any contract, their names cannot be entered in the register of members without the details of guardians. Therefore, Mr. Joe is advised that while filling MGT – 1, the name of a minor shall be entered only if the details of the guardian are available. Thus, Zoey's name shall also appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Illustration 2.

Tanya and Tarun who recently got married were jointly allotted 1000 shares by New Hospitality Services Private Limited. Tarun intimated the company that only the name of his wife should appear in the records of the company in respect of joint holding of shares allotted to them. The directors of the company are not sure whether this is possible, given that the shares are held in the names of both Tanya and Tarun.

Answer:

Joint holders of shares may request the company to enter their names in the register in a certain order, or execute transfers to have their holdings split, with the result that part of the holding is entered showing the name of one holder and part showing the name of other holder. However, the condition of Tarun that only the name of his wife, Tanya, should appear in the register as a member cannot be acceded to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Illustration 3.

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2021, for laying down the financial statements relating to the Financial Year ended 31st March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the annual return for the year ending 31st March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

Answer:

The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92 (4) states that every company has to file an annual return with the ROC within 60 days from the date on which Annual General Meeting is held or where no Annual General Meeting is held in any year, it shall be filed within 60 days from the date on which the Annual General Meeting should have been held, along with the reasons for not holding the AGM.

In the above case, the Annual General Meeting should have been held by 30th September, 2021 but it

did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of Section 92 of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in Section 92 (5) of the Act.

Illustration 4.

Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice for attending the Annual General Meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.

ANSWER:

As per Rule 18 (3) (v) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the email and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.

Illustration 5.

The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.

Answer:

In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth Rs. forty lakh which works out to 80% (40,00,000/50,00,000 *100) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (i.e., shareholders holding shares worth ₹ 47,50,000) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.

Illustration 6.

There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1st July 2022 at 2:00 p.m. at its registered office. There were 28 members present till 2:30 p.m. at the venue of the AGM. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions after observing due process. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

Answer:

As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a general meeting of the company. Thus, the quorum for the Annual General Meeting of Nice

Games Private Limited was complied with and the company has not contravened any of the provisions of the Companies Act, 2013.

Illustration 7.

Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2022 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General Meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 and 5 and accordingly passed resolutions as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Answer:

According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Illustration 8.

Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra-ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?

Answer:

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. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

Illustration 9.

Consider a situation where directors are also the shareholders of the company.

Answer:

Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director shall vote in the same manner as a common shareholder would have voted in a general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

Illustration 10.

Can an insolvent shareholder vote at the general meeting by show of hands?

Answer:

Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as a member.

Illustration 11.

The Annual General Meeting of Super Star Bakers Limited was attended by 60 members. In respect of a particular business, the resolution was to be passed as a special resolution. Ten members voted against the resolution whereas five abstained themselves from the voting. The Chairman of the meeting Mr. Ravinder declared that the resolution was passed as a special resolution. Whether the declaration is valid.

Answer:

In case of a special resolution, the requirement is that the votes cast in favour of the resolution must be three times the number of the votes cast against it. In the above case, ten members voted against the resolution which implies that minimum thirty members (three times of ten) must vote in favour of the resolution. Ignoring five members who abstained themselves from voting, forty five members (sixty minus ten minus five) voted in favour of the resolution which far exceeds the required majority of thirty members. Therefore, declaration by Mr. Ravinder, Chairman of the meeting, that the resolution was passed as a special resolution is valid.

Illustration 12.

In the annual general meeting of Steel Products Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.

Answer:

For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting decides that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would be immaterial.

Illustration 13.

Abbeys Grocers Private Limited closed its financial year on 31st March, 2022. When should it hold is Annual General Meeting (AGM) for the financial year 2021-22?

Answer:

According to section 96 (1) of the Companies Act, 2013, Abbeys Grocers Private Limited should hold its annual general meeting for the financial year 2021-22 latest by 30th September 2022 unless an extension is granted by jurisdictional Registrar of Companies for any special reason.

Illustration 14.

Abbyrush Mechanics Limited was incorporated on 12th July, 2022. When should the company hold its first Annual General Meeting (AGM)?

Answer:

In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2023. According to section 96 (1), the company must hold its first AGM latest by 31st December 2023 i.e., within 9 months of the close of its financial year on 31st March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Illustration 15.

The members of Blumove Peacocks Appliances Private Limited, holding more than $1/10^{th}$ voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2022. However, the directors did not pay any heed to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.

Answer:

In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitionists and therefore, the Board Directors is required to initiate the process of calling the meeting. According to section 100 (4), if the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of such requisition, then the requisitionists may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to section 100 (5), a meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board of Directors.

Accordingly, the requisitionists being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

Illustration 16.

The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on 2nd October, 2022. Discuss whether the general meeting can be convened on the said date and place.

Answer:

Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitionists. As per Rule 17 (2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2022 is a National Holiday.

PRACTICE QUESTIONS

Question 1.

In a general meeting of alpha software limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of mukesh is maintainable under the provisions of the companies act, 2013?

Answer:

PROVISION:

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

a. is or could reasonably be regarded as defamatory of any person;
b. is irrelevant or immaterial to the proceeding; or
c. is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

ANALYSIS AND CONCLUSION:

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Question 2.

Tulip ltd. Maintains its register of members at its registered office in mumbai. A group of members residing in kolkata want to keep the register of members at kolkata.

a. Explain with provisions of companies act, 2013, whether the company can keep the registers and returns at kolkata.
b. Does mr. Rich, holding 400 shares of total worth rs.4000 only, has the right to inspect the register of members?

Answer:

a. PROVISION:

Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

ANALYSIS AND CONCLUSION:

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

b. PROVISION:

As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture- holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

ANALYSIS AND CONCLUSION:

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the

Register of Members during business hours without payment of any fees, as per the provisions of this section.

Question 3.

Examine the validity of the following with reference to the relevant provisions of the companies act, 2013:

The board of directors of shrey ltd. Called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

Answer:

PROVISION:

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

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled.

ANALYSIS AND CONCLUSION:

Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Question 4.

Zorab limited served a notice of general meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

Answer:

PROVISION:

Under section 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

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

a. the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
   - ✓ every director and the manager, if any;
   - ✓ every other key managerial personnel; and
   - ✓ relatives of the persons mentioned in sub-clauses (i) and (ii);

b. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

ANALYSIS AND CONCLUSION:

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice u/s 102.

Question 5.

Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is

the legal position in respect of demand for inspection of proxies by surya as per the provisions of the companies act, 2013.

Answer:

PROVISION:

Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

ANALYSIS AND CONCLUSION:

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

Question 6.

There are certain entities to which the companies (significant beneficial owners) rules, 2018 are not applicable. List them.

Answer:

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

a. The Investor Education and Protection Fund Authority;
b. Its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;
c. The Central Government, any State Government or any local authority;
d. An entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);
e. Investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and
f. Investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Question 7.

The articles of association of dja ltd. Require the personal presence of 7 members to constitute quorum of general meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of managing director:

a. A, the representative of governor of uttar pradesh.
b. B and c, shareholders of preference shares,
c. D, representing y ltd. And z ltd.
d. E, f, g and h as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Answer:

PROVISION:

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

ANALYSIS AND CONCLUSION:

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Question 8.

What do you mean by proxy? Explain the provisions relating to appointment of proxy under the companies act, 2013.

Answer:

PROVISION: A proxy is an instrument in writing executed by a share holder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:

1. Under section 105 (1) 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.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.

3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

Question 9.

Super mart limited called its agm in order to lay down the financial statements for the approval of the shareholders. Due to want of quorum, the meeting was cancelled. The directors did not file the annual returns with the registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of agm would not apply, as agm was cancelled. Has the company contravened the provisions of companies act, 2013? If the company has contravened the provisions of the act, how will it be penalized?

Answer:

PROVISION:

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2,00,000 in case of a company and fifty thousand rupees in case of an officer who is in default.

ANALYSIS AND CONCLUSION:

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 (5) of the Act.

Question 10.

Madurai bakestry ltd. Issued a notice for holding of its annual general meeting on 7th september, 2022. The notice was posted to the members on 16th august, 2022. Some members of the company alleged that the company had not complied with the provisions of the companies act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the act, decide:

a. Whether the meeting has been validly called?
b. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

c. Can the delay in giving notice be condoned?

Answer:

PROVISION:

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

ANALYSIS AND CONCLUSION:

Hence, in the given question:

a. A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
b. As explained in (i) above, notice falls short by 2 days.
c. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Question 11.

As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the board of directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?

Answer:

PROVISION:

Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within 15 days from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within 15 days from such an event.

ANALYSIS AND CONCLUSION:

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

Question 12.

With a view to transact some urgent business, ratna, rimpi and ratnesh, the three directors of shilpkaar constructions limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is rs. 30 crores divided into 3 crores shares of rs. 10 each. Keeping in view the applicable provisions of the

companies act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

Answer:

PROVISION:

Generally, general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto

a. AGM: in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
b. OTHER THAN AGM: in the case of any other general meeting, by
   - ✓ Company having Share Capital: if the company has share capital then members of the company holding majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
   - ✓ Company having no Share Capital: if the company has no share capital then members of the company having, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

   Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

ANALYSIS AND CONCLUSION:

In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

Question 13.

Miraj sugar mills limited held its annual general meeting on september 15, 2022. The meeting was presided over by mr. Venkat, the chairman of the board of directors of the company. On september 17, 2022, mr. Venkat, 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, examine the manner in which the minutes of the above meeting are to be signed in the absence of mr. Venkat and by whom.

Answer:

PROVISION:

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 30 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.

ANALYSIS AND CONCLUSION:

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

Question 14.

Shikhar cement limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the companies act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.

Answer:

PROVISION:

Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

ANALYSIS AND CONCLUSION:

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

a. there should be entered a brief report on the postal ballot conducted including the resolution proposed.
b. there should be entered the result of the voting made by the shareholders in respect of resolution.
c. there should be entered the summary of the scrutinizer's report.
d. there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

Question 15.

The paid-up share capital of disha home appliances limited is rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the annual return of the company shall be required to be certified by a company secretary in practice.

Answer:

PROVISION:

In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 provides that the annual return, filed by

a. a listed company or
b. a company having paid-up share capital of Rs.10 crore or more; or

c. turnover of ₹ 50 crore or more,

ANALYSIS AND CONCLUSION:

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Question 16.

Prince auto-parts limited, a listed company, has recently concluded its annual general meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional registrar of companies a copy of the report on its agm.

a. State within how much time it is required to file the said report.
b. In case prince auto-parts limited fails to file the report on its agm within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure.

Answer:

PROVISION:

In terms of Section 121 (2) of the Companies Act, 2013, Prince Autoparts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.

In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file the report within 30 days of conclusion of AGM,

a. Such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and
b. Every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

ANALYSIS AND CONCLUSION:

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of 30 days, it shall be liable to the above stated penalty which may go maximum up to Rs. five lakhs in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be Rs. one lakh in case of continuing failure.

Question 17.

Ashok, a director of gama electricals ltd. Gave in writing to the company that the notice for any general meeting and of the board of directors' meeting be sent to him only by registered post at his residential address at kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

a. Whether the contention of ashok is valid.

b. Will your answer be the same if ashok remains in u.s.a. For one month during the notice of the meeting and the meeting held?

Answer:

PROVISION:

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

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

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

CONCLUSION:

Accordingly, the questions as asked may be answered as under:

a. The contention of Ashok shall be tenable, for the reason that the notice was not properly served.

b. In the given circumstances, the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(QP SEPT '24)**

Creative Textiles Ltd. is an unlisted public company. The company's paid-up share capital is Rs.50 lakh consisting of 5 lakh shares having face value of Rs.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:

a. Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?
b. If the company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM?

Answer:

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.

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.

Question 2. **(QP SEPT'24)**

The paid up share capital of Star Furnishing Limited is Rs.1,00,00,000 divided into 10,00,000 equity shares of Rs.10 each as at 31stMarch, 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:

a. Can Star Furnishing Limited make further investment in equity shares of Home Decor Limited during 2024-25?

b. Can Star Furnishing Limited exercise voting rights at the Annual General Meeting of Home Decor Limited?

Answer:

a. 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:

Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

Where the subsidiary company holds such shares as a trustee; or

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.

b. 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.

Question 3.

LKJ Ltd. is a company having paid up share capital of Rs.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.

a. 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?

b. 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?

c. 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?

Answer:

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:

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

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.

Question 4. **(MTP MAY'24)**

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:

a. Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?
b. Whether Mr. Rahi could adjourn the meeting in the current scenario?

Answer:

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.

a. 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.

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

Question 5. **(MTP MAY'24)**

MNO limited has the following equity share

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

Whether a company can change the rights of its shareholders?

Whether the dissenting shareholders can apply to the Tribunal?

Answer:

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 than10 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.

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.

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.

Question 6. **(MTP MAY'24)**

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.

Answer:

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.

Question 7. **(MTP MAY'24)**

Infotech ltd. Was incorporated on 1.4.2018. No general meeting of the company has been held till 30.4.2020. Discuss the provisions of the companies act, 2013 regarding the time limit for holding the first annual general meeting of the company and the power of the registrar to grant extension of time for the first annual general meeting.

Answer:

PROVISION:
According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year. The first financial year of Infotech Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019.
The section further provides that 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.
ANALYSIS AND CONCLUSION:
Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit.

Question 8. **(MTP SEPT'24)**

KMN cables ltd. Scheduled its annual general meeting to be held on 15th september, 2022 at 11:00 a.m. The company has 900 members. On the scheduled date of agm following persons were present by 11:30 a.m.

a. P1, p2 & p3 shareholders
b. P4 representing abc ltd.

c. P5 representing def ltd.
d. P6 & p7 as proxies of the shareholders

1. Examine with reference to relevant provisions of the companies act, 2013, whether quorum was present in the meeting.
2. What will be your answer if p4 representing abc ltd., reached in the meeting after 11:30 a.m.?
3. In case lack of quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
4. What happens if there is no quorum at the adjourned meeting?

Answer:

PROVISION: According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

1. ANALYSIS AND CONCLUSION:
   a. P1, P2 and P3 will be counted as three members.
   b. If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
   c. Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

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

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

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

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

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

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

Question 9. **(MTP JAN'25)**

Examine the validity of the following decisions of the board of directors with reference of the provisions of the companies act, 2013.

1. In an annual general meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of

the meeting rejected the request on the ground that only the members present in person can demand for poll.

2. In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer:

PROVISION:

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

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

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

b. in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

ANALYSIS AND CONCLUSION:

Hence, on the basis on the above provisions of the Companies Act, 2013:

1. The chairman cannot reject the demand for poll subject to provision in the articles of company.
2. The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question 10. **(MTP JAN'25)**

A general meeting was scheduled to be held on friday, 15th april, 2022 at 3.00 p.m. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints mr. Y as his proxy and the proxy form dated 09-04-2022 was deposited by mr. Y with the company at its registered office on 11-04-2022. Similarly, another member mr. W also gives two separate proxies to two individuals named mr. M and mr. N. In the case of mr. M, the proxy dated 12-04-2022 was deposited with the company on the same day and the proxy form in favour of mr. N was deposited on 14-04-2022. All the proxies viz., y, m and n were present before the meeting.

According to the provisions of the companies act, 2013, who would be the persons allowed to represent as proxies for members x and w respectively?

Answer:

PROVISION:

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself

before the proxy has voted but once the proxy has voted the member cannot retract his authority.
Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

ANALYSIS AND CONCLUSION:

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.
However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Question 11. (MTP SEPT'24)

M. H. Company limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'a', a shareholder of the m. H. Company limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by m. H. Company limited regarding issue of sweat equity shares valid according to the provisions of the companies act, 2013? Explain in detail.

Answer:

PROVISION:

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.
Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

a. the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
b. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

ANALYSIS AND CONCLUSION:

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 12. (RTP MAY'24)

Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of Rs.one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

a. Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.
b. What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

Answer:

a. In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1),

the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under:

"In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting."

Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. Rs.10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.

b. The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:
   - ✓ Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.
   - ✓ The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.
   - ✓ In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.
   - ✓ In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.
   - ✓ A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

Question 13. (RTP JAN'25)

XYZ Limited issued a prospectus to raise funds for a new manufacturing project. After successfully raising the funds, the company identified an investment opportunity in a different industry six months later, requiring a significant portion of the funds. The proposed investment involved trading in equity shares of other listed companies.

The board of directors suggested varying the original objectives for which the funds were raised to allow this new investment and recommended passing a special resolution in the company's general meeting. While the promoters and controlling shareholders supported this change, some shareholders expressed concerns, particularly regarding the deviation from the initially stated purpose of the funds. Based on the provisions of the Companies Act, 2013, advise on the validity of the proposal to redirect the funds toward this new investment.

Answer:

According to section 27(1) of the Companies Act, 2013, 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 general meeting by way of special resolution.

The second proviso to sub-section (1) prescribes that such company is not 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 question, XYZ Limited, is planning to use the amount initially raised for investing in a different industry, which also involves trading in equity shares of other listed companies.

Though XYZ Limited has passed a special resolution for the said proposal but it cannot use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company. Hence, the said proposal for new investment is not valid.

Question 14. **(RTP SEPT'24)**

Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

Resolution to increase the authorised share capital of the company.

Appointment and fixation of the remuneration of Mr. Pramod as the statutory auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

Answer:

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

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

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

every director and the manager, if any;

every other key managerial personnel; and

relatives of the persons mentioned in sub-clauses (i) and (ii);

any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Pramod as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 15. **(MTP JAN'25)**

Nath Private Limited is a start-up company. Mr. P has been appointed as Accounts Manager of Nath Private Limited. The Board meeting for approval of accounts is to held be on 01.08.2024. For this he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. P about the statements that are required to be prepared.

Answer:

As per section 2(40) of the Companies Act, 2013, 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 sub-clause (i) to sub-clause (iv):

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

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

Question 16. **(MTP SEPT'24)**

Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:

a. The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.

b. The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 have given their consent in writing for conducting the meeting in Lonavala.

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.

Answer:

Section 96(2) of the Companies Act, 2013 states that every Annual General Meeting (AGM) shall be called on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town, or village in which the registered office of the company is situated.

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

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

In the instant case,

a. Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.

b. Kedar Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 98 members out of 100 have given their consent for conducting the meeting in Lonavala.

Question 17. **(MTP SEPT'24)**

What is the mode of service of documents to Registrar or members, as per the provisions of the Companies Act, 2013.

Answer:

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

a. Post, or

b. registered post, or

c. speed post, or
d. courier, or
e. by delivering at his office or address, or
f. by such electronic or other mode as may be prescribed.

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

Question 18. (RTP SEPT'24)

The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting.

Answer:

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

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

Question 19. (QP MAY'24)

Enumerate the provisions of the Companies Act, 2013 in respect to the following:

a. Time limit for filing of annual return when Annual General Meeting is held.
b. Time limit for filing of annual return when Annual General Meeting is not held.

Answer:

Time limit for Filing of Annual Return

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

Question 20. (MTP SEPT'24)

Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013.

Answer:

Persons entitled to receive the Notice of the General Meeting

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

a. every member of the company, legal representative of any deceased member or the assignee of insolvent member;
b. the auditor or auditors of the company;
c. every director of the company.

Question 21.

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

Answer:

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

a. five members personally present if the number of members as on the date of meeting is not more than one thousand,
b. fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
c. thirty members personally present if the number of members as on the date of the meeting exceeds five thousand,

shall be the quorum for a meeting of the company.

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

Question 22. **(MTP MAY'24)**

Enumerate the provisions of the Companies Act, 2013 in respect to the following:

a. Matters not to be included in the minute, as per the opinion of the Chairman.
b. Maximum time allowed for entering minutes of proceedings.

Answer:

a. There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–
   - ✓ is or could reasonably be regarded as defamatory of any person; or
   - ✓ is irrelevant or immaterial to the proceedings; or
   - ✓ is detrimental to the interests of the company.
b. Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

Question 23. **(MTP JAN'25)**

TST Limited has Equity Share Capital of 10000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.

Answer:

PROVISION:

Validity of Resolution passed in the EGM called by the Requisitionists

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

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

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

If the Board does not, within twenty one 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 forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.

Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be re-imbursed to the requisitionists by the company.

ANALYSIS AND CONCLUSION:

In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ₹ 30,000 (each holding ₹ 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

8. DECLARATION AND PAYMENT OF DIVIDEND

PRACTICAL QUESTIONS

Question 1.

The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

Answer:

RELEVANT PROVISION:

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

ANALYSIS AND CONCLUSION:

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.
3. Consequences: The following are the consequences for violation of the above provisions:
   a. Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of 2 years and shall also be liable for a minimum fine rupees Rs.1,000/- for every day during which such default continues.

b. The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Question 2.

Referring to the provisions of the companies act, 2013, examine the validity of the following:
The board of directors of abc tractors limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this act.

Answer:

RELEVANT PROVISION:

Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

ANALYSIS AND CONCLUSION:

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013.
Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is NOT VALID.

Question 3.

Star computers limited declared and paid dividend in time to all its equity holders for the financial year 2021-22, except in the following two cases:

a. Mrs. Sheela bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform mrs. Sheela bhatt about this discrepancy.
b. Dividend amount of ₹ 50,000 was not paid to the successor of late mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.
You are required to analyse these cases with reference to provisions of the companies act, 2013 regarding failure to distribute dividends.

Answer:

RELEVANT PROVISION:

a. Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non-compliance was not communicated to him.
In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.
b. Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

ANALYSIS AND CONCLUSION:

In the present case, the dividend could not be paid because it was not allowed to be paid by the court

until the matter was resolved about succession. Hence, there will not be any liability on the company and its directors, etc.

Question 4.

Alpha herbals, a section 8 company is planning to declare dividend in the annual general meeting for the financial year ended 31-03-2023. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the companies act, 2013.

Answer:

RELEVANT PROVISION:

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

ANALYSIS AND CONCLUSION:

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is NOT according to the provisions of the Companies Act, 2013.

Question 5.

YZ medical instruments limited is a manufacturing company & has proposed a dividend @ 10% for the year 2022-2023 out of the profits of current year. The company has earned a profit of ₹ 910 crores during 2022-2023. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ medical instruments limited allowed to do so? Comment.

Answer:

RELEVANT PROVISION:

According to section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2022-23. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors.

ANALYSIS AND CONCLUSION:

Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Question 6.

PQ ltd. Declared and paid 10% dividend to all its shareholders except mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the companies act, 2013 regarding failure to distribute dividend.

Answer:

RELEVANT PROVISION:

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

ANALYSIS AND CONCLUSION:

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Question 7.

Alex limited is facing loss in business during the financial year 2022-2023. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The board of directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the board of directors valid?

Answer:

RELEVANT PROVISION:

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 3 financial years.

ANALYSIS AND CONCLUSION:

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2022-2023. In the immediately preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) 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 12% during the F.Y 2022-2023 is NOT VALID.

QUESTIONS FROM RTP'S, MTP'S, QP'S

Question 1. **(QP MAY'24)**

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 Rs.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 Rs.16 lakh. Accumulated profits during the past eight years wereRs.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.

Answer:

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 Rs.16 lakh are insufficient to meet the dividend requirement of Rs.50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

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

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.		-
	Paid-up share capital and free reserves	680+ 170	
II		= 850 lakh (C)	Met
III	10% of (C) Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C) The company has since made profit in the financial year in which dividend is declared.	85 lakh	Met
	Free Reserves (D)	170 lakh	
	Amount drawn for payment of dividend (E)	34 lakh	
IV	Balance of reserves after such withdrawal (F) =(D)-(E)	136 lakh	Met
	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.

Question 2. **(MTP MAY'24)**

The annual general meeting of abc bakers limited held on 30th may, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by board of directors. However, the company was unable to post the dividend warrant to mr. Ranjan, an equity shareholder, up to 25th july, 2022. Mr. Ranjan filed a suit against the company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the companies act, 2013, whether mr. Ranjan would succeed? Also, state the directors' liability in this regard under the act.

Answer:

RELEVANT PROVISION:

As per Sec. 127 of the companies act 2013, In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

1. Every director of the company shall be punishable with imprisonment of up to 2 years, if he is knowingly a party to the default AND, he shall also be liable to pay minimum fine of Rs. 1,000 for every day during which such default continues.
2. The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

CONCLUSION:

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum

Question 8. **(MTP JAN'25)**

Anoj Limited declared a final dividend to its shareholders at the Annual General Meeting on 1st August, 2024. As per the decision, the dividend payment was to be made within the stipulated 30-day period. However, due to internal financial constraints, the company failed to pay the declared dividend and did

not dispatch the dividend warrants to the shareholders within the required timeframe. The default continued until 15th October, 2024, leading to shareholder complaints. In light of this scenario, what specific punishments and liabilities could the company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013.

Answer:

According to section 127 of the Companies Act, 2013, in case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

a. Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of Rs.1,000 for every day during which such default continues.
b. The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Question 9. **(QP SEPT'24, MTP SEPT'24)**

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

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

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.

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

a. Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?
b. Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

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

Answer:

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

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

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

ANALYSIS AND CONCLUSION:

Accordingly, following shall be the answers:

a. Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years.

   Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

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

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

9. ACCOUNTS OF COMPANIES

ILLUSTRATIONS

Illustration 1.

Statement – Vouchers need not to be preserved as part of requirement of preserving books for period of 8 years.

Answer: False

Reason – As per section 128(5) of the Companies Act 2013, the books of account, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

Illustration 2.

Can XYZ limited maintain its books of account on cash basis?

Answer:

The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and according to double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement.

Hence XYZ Ltd. cannot maintain its books of account on cash basis.

Illustration 3.

The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer:

Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of

a. Any notes annexed to or forming part of such financial statement;
b. The auditor's report; and
c. The Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable.

Illustration 4.

Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can states that controls are adequate and operating efficiently?

Answer:

Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not.

Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

Illustration 5.

ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Answer:

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.

Illustration 6.

ABC Ltd is a company with a turnover of more than ₹ 1000 crores in each of the preceding three financial years and having incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?

Answer:

As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Illustration 7.

Can an international organisation be engaged for implementation of CSR project?

Answer:

Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

Illustration 8.

Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Answer:

No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on

its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RIL in this case) may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Illustration 9.

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2021, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

Answer:

Vandana Ltd. Would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. Would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Illustration 10.

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2022 was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer:

In the present case, though AGM was not held, it ought to be held by 30 September 2022 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days

of the last date before which the AGM should have been held i.e., by 30 October 2022 along with such fees or additional fees as may be prescribed.

Illustration 11.

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2022 but the same were not adopted by the shareholders?

Answer:

Since the AGM has been held in time on 27 September 2022, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

Illustration 12.

Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co LLP, as its internal auditors for the year ended 31st March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

Answer:

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co LLP.

Illustration 13.

XYZ Ltd. wants to maintain its books of account on cash basis. Is this a valid act of XYZ Ltd?

Answer:

The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement.

Hence XYZ Ltd. cannot maintain its books of accounts on cash basis.

Illustration 14.

Modern Furniture Limited (MFL) undertake a CSR project in light of its CSR policy; of placing and installing benches as public parks and gardens in supervision of district administration. Initially it was estimated that project will completed in span of 8-10 months; but due to renovation of half a dozen of parks the task of installing benches there postponed till the construction completed (which expected to take further couple of quarters). Board of MFL considering the circumstances declare the project an ongoing project, extend the duration beyond one year; and also provides reasonable justification. Whether board of MFL correctly re-categories the project as ongoing project or not?

Answer:

Rule 2(i) of the CSR rules provides that projects which are initially of less than a year's time (therefore not registered as multi-year project) but duration of which extended beyond the one-year period, by board based on reasonable causes or justification; shall be re-categories as ongoing project. Hence decision of board of MFL is legal and valid.

Illustration 15.

Amazon Company Limited, a company incorporated under the Companies Act, 2013, has a turnover of Rs. 150 crores and Rs. 90 crores during the financial year ended 31st March 2019 and 31st March 2020 respectively.

Answer:

Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2020 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

Illustration 16.

The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts.

Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

Answer:

As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

DESCRIPTIVE QUESTIONS

Question 1.

The registered office of the Bharat Ltd. Is situated in a classified backward area of Maharashtra. The board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Please advise.

ANSWER:

RELEVANT PROVISION:

a. AT R.O: Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.
b. ANY OTHER PLACE – BOD APPROVAL: Provided all or any of the books of accounts 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 7 days thereof file with the registrar a notice in writing in form AOC-5 giving full address of that other place.

CONCLUSION:

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the above-mentioned procedure.

Question 2.

The board of directors of vishwakarma electronics limited consists of Mr. Ghanshyam (director), Mr. Hyder (director) and Mr. Indersen (managing director). The company has also employed a full time secretary.

The profit and loss account and balance sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the companies act, 2013?

Answer:

RELEVANT PROVISION:

1. 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 AT LEAST BY:
   a. The chairperson of the company where he is authorised by the Board OR by 2 directors out of which 1 shall be managing director, if any, and
   b. The Chief Executive Officer and
   c. The Chief Financial Officer and
   d. The Company Secretary of the company, wherever they are appointed.
2. OPC: In the case of One person company, only by 1 director, for submission to the auditor for his report thereon.

CONCLUSION:

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the MD should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Question 3.

A housing finance ltd. Is a housing finance company having a paid up share capital of rs. 11 crores and a

turnover of rs. 145 crores during the financial year 2022-23. Explain with reference to the relevant provisions and rules, whether it is necessary for a housing finance ltd. To file its financial statements in xbrl mode.

Answer:

RELEVANT PROVISION:

1. XBRL FILING: As per Rule 1 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015,* The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:
   a. Companies listed with stock exchanges in India and their Indian subsidiaries or
   b. Companies having Paid up capital of Rs. 5 Crore or above or
   c. Companies having turnover of Rs. 100 Crore or above or
   d. All companies which are required to prepare their financial statements in accordance *with Companies (Indian Accounting Standards) Rules, 2015.*
2. EXEMPTION: The following class of companies are exempted from the above rules:
   a. Non-banking financial companies,
   b. Housing finance companies and
   c. Companies engaged in the business of banking and insurance sector.

CONCLUSION:

Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode.

Question 4.

Herry limited is a company registered in Thailand. SKP limited (registered in India), a wholly owned subsidiary company of Herry limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Answer:

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of 2 years from such commencement, align its financial year as per the provisions of this clause.

SKP Limited is advised to follow the above procedure accordingly.

Question 5.

The income tax authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. For the financial year 2011-12 and, therefore, filed an application before the national company law tribunal (NCLT) to issue the order to Chetan Ltd. For re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the income tax authorities to NCLT

Answer:

PROVISION:

1. APPLICATION BY WHOM: A company shall not re-open its books of account and not 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

2. APPLICATION TO WHOM:
   a. A court of competent jurisdiction or
   b. The tribunal
3. ORDER OF COURT / TRIBUNAL: The Competent court or Tribunal may pass an order to revise the accounts and recast the financial statements of the company, if they satisfied that:
   a. 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.
4. 8 YEARS TIME LIMIT FOR PASSING REOPENING OF A/C'S: 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.

ANALYSIS AND CONCLUSION:

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e., 2022-2023, is invalid.

QUESTION FROM MTPS, RTPS, QPS

Question 1. **(MTP JAN'25)**

a. Ravi limited maintained its books of accounts under single entry system of accounting. Is it permitted under the provisions of the companies act, 2013?

b. State the persons responsible for complying with the provisions regarding maintenance of books of accounts of a company.

c. Whether a company can keep books of accounts in electronic mode accessible only outside India?

Answer:

a. According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

b. Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

- ✓ Managing Director,
- ✓ Whole-Time Director, in charge of finance
- ✓ Chief Financial Officer
- ✓ Any other person of a company charged by the Board with duty of complying with provisions of section 128.

c. A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of *the Companies (Accounts) Rules, 2014*. According to such Rule,

- ✓ The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.
- ✓ 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.
- ✓ 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 periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Question 2. **(MTP SEPT'24)**

The government of India is holding 51% of the paid-up equity share capital of sun ltd. The audited financial statements of sun ltd. For the financial year 2021-22 were placed at its annual general meeting held on 31st august 2022. However, pending the comments of the comptroller and auditor general of

India (cag) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of cag comments on the accounts, the adjourned annual general meeting was held on 15th October, 2022 whereat the accounts were adopted. Thereafter, sun ltd. Filed its financial statements relevant to the financial year 2021-22 with the registrar of companies on 12th November, 2022. Examine, with reference to the applicable provisions of the companies act, 2013, whether sun ltd. Has complied with the statutory requirement regarding filing of accounts with the registrar?

Answer:

RELEVANT PROVISION:

a. If the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.
b. Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

ANALYSIS AND CONCLUSION:

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October 2022 and filing of financial statements with Registrar was done on 12th November, 2022 i.e. within 30 days of the date of adjourned AGM But Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2022.

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

Question 3. **(MTP JAN'25)**

Form Limited is engaged in the business of manufacturing shoes for kids. It is required to hold its Annual General Meeting (AGM) for the financial year ending 31st March 2024 by 30th September 2024. However, due to internal disputes among the directors, the company was unable to convene the AGM by the due date.

Explain the relevant provisions of the Companies Act, 2013, with respect to the filing of the financial statements with the Registrar in this case.

Answer:

As per section 137 of the Companies Act, 2013, where the Annual General Meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

Question 4. **(RTP SEPY'24)**

Define the term 'Book of account' as per the Companies Act, 2013.

Answer:

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

a. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
b. all sales and purchases of goods and services by the company;
   - ✓ the assets and liabilities of the company; and
   - ✓ the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Question 5. **(MTP MAY'24, MTP SEPT'24)**

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

Answer:

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

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

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

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

Question 6. **(MTP MAY'24)**

Kesar Limited, an unlisted company furnishes the following data:

a. Paid-up share capital as on 31st March 2024 Rs.49 Crore.
b. Turnover for the year ended 31st March 2024 Rs.100 Crore
c. Outstanding loan from bank as on 3rd March 2024 is Rs.102 crore (Rs.105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 Rs.95 crore after repayment.

Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.

Answer:

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

a. paid up share capital of Rs.50 crore rupees or more during the preceding financial year; or
b. turnover of Rs.200 crore rupees or more during the preceding financial year; or
c. outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore rupees or more at any point of time during the preceding financial year; or
d. outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

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

In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e.,

Rs.102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.

Question 7. **(MTP MAY'24)**

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a "Directors' Responsibility Statement". Briefly enumerate any four matters to be furnished in the said statement.

Answer:

Directors' Responsibility Statement: According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

a. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
b. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
c. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
d. the directors had prepared the annual accounts on a going concern basis; and
e. the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
f. the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Question 8. **(MTP MAY'24)**

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	Rs. 5.00 crore	Rs. 3.75 crore
2021-22	Rs. 7.00 crore	Rs. 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Answer:

PROVISION:

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.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

ANALYSIS AND CONCLUSION:

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case,

a. Net Profit before tax of Red Limited for the FY 2021-22 is Rs. 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds Rs. 5 crore.
b. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (Rs. 5 crore + Rs. 7 crore)/ 2 = Rs. 6 crore

Minimum contribution towards CSR will be: 2% of Rs. 6 crore = Rs. 0.12 crore or Rs. 12 Lacs.

Question 9. **(RTP MAY'24)**

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 (Rs. in crore)	Balances as on 30-09-2020 (Provisional Rs. 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

Answer:

PROVISION:

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.

ANALYSIS AND CONCLUSION:

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.

Question 10.

The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid- up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the

meeting was adjourned without adoption of the accounts. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.

Answer:

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

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

In the instant case, the accounts of Orange Limited were adopted at the adjourned AGM held on 20th September, 2023 and filing of financial statements with Registrar was done on 29th September, 2023 i.e. within 30 days of the date of adjourned AGM. However, Orange Limited has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 17th August, 2023.

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

Question 11. (RTP SEPT'24)

K Ltd. in its first year of incorporation maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

State the person responsible for complying with the provisions regarding maintenance of Books of Accounts, etc. of a Company.

Answer:

According to section 2(42) of the Companies Act, 2013, "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.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to, online services such as telemarketing, telecommuting, telemedicine, education and information research.

In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in online business of telemarketing services in India having its main server outside India, Gram Pte will be treated as foreign company.

Where a company or body corporate, which is a holding company or a subsidiary or associate company of

a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Here, Prism Ltd. is advised to follow the above procedure accordingly.

Question 12. **(RTP JAN'25)**

Vishal Limited is an unlisted public company, having five directors in its board which includes two independent directors.

Sam (P) Limited, is subsidiary company of Vishal Limited, actively carrying on its business, having paid up capital of Rs.1.5 crore with 40 members and turnover of Rs.18 crore, respectively and the said company is not a start-up company.

It is also provided that Sam (P) Limited is not a start up company.

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

Whether Sam (P) Limited is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements? Provide your answer by analyzing Sam (P) Limited into following category of companies:

1. Small company, and
2. Dormant company, respectively.

Answer:

According to section 2(10) of the Companies Act, 2013, 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 sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

For considering the applicability of preparation of cash flow statement in case of Sam (P) Limited, it is required first to analyze that Sam (P) Limited does not fall in the following categories:

1. Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85). Thus, even though its paid up capital and turnover are within the prescribed limits, as Sam (P) Limited is a subsidiary company of Vishal Limited, it cannot be considered as small company.
2. Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.

Question 13. **(QP MAY'24)**

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.

Answer:

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.

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.

Question 14. **(QP MAY'24)**

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.

1. The statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.
2. The voluntary revision of financial statements or board's report by the directors.
3. For how many preceding financial years the board of directors may revise the financial statements?

Answer:

1. 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.

2. 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.
   c. 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.
3. The board of directors may revise financial statements in respect of any of the three preceding financial years.

Question 15. **(QP SEPT'24)**

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?

Answer:

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.

Question 16. **(QP SEPT '24)**

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.

Answer:

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.

10. AUDIT AND AUDITORS

ILLUSTRATIONS

Illustration 1.

Modern Furniture Limited (MFL), despite not mandated by Section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee.

Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

Answer: -

Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under section 177, but constituted by company, then also such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.

Hence, act of audit committee and board at MFL is legally valid.

Illustration 2.

Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

Answer:

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Hence in the instant case, the appointment of Mr.

Ganpati by the Managing Director himself is invalid due to violation of Section 139(6) of the Companies Act, 2013.

Illustration 3.

FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crore. During the year ended 31st March 2023, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer: -

The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the

company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

Illustration 4.

"Mr. Ashish", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of "XYZ Ltd."?

Answer:

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr.
Ashish is holding security of ₹ 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

Note – In earlier act i.e., Companies Act 1956 the holding securities of par value upto the limit of ₹ 1000 by auditor was not the disqualification criteria. Under current Act i.e., Companies Act 2013, not a single rupee of holding by auditor is allowed.

Illustration 5.

"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." Having face value of ₹ 90,000/-. Whether "Mr. P" is qualified for being appointed as an auditor of "ABC Ltd."?

Answer:

As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face value in ABC Ltd., which is as per requirement of proviso to section 141(3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Though rule 10(1) says, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh but here rather than a literal interpretation, reasonable construction is required. And holding of all the relatives together shall be checked against the threshold.

Further, even if relative of one of the partners of any firm hold securities or interests exceeding the threshold then, not only such partner even firm shall not be eligible to appointed as auditor.
The threshold condition specified above shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities.
If the relative acquires any security or interest above the prescribed threshold i.e. ₹ 1,00,000, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.

Illustration 6.

"BC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of
"Mr. C", is holding securities of "MWF Ltd." having face value of ₹ 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?

Answer:

As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or

associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

Illustration 7.

"ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as auditors in 4, 6 and 10 companies respectively.

a. Provide the maximum number of audits remaining in the name of "ABC & Co."

b. Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

Answer:

In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crore.

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60 companies' audit.

Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Total Number of audits for which the firm would be eligible	= 20*3	=60
Number of audits already taken by all the partners In their individual capacity = 4+6+10		= 20
Remaining number of audits available to the firm		= 40

With reference to above provisions, an auditor can hold more appointment as auditor (i.e. ceiling limit as per section 141(3)(g) - already holding appointments as an auditor). Hence

- ✓ Mr. A can hold: 20 – 4 = 16 more audits.
- ✓ Mr. B can hold 20 - 6 = 14 more audits and
- ✓ Mr. C can hold 20-10 = 10 more audits.

Note - It has been assumed that the companies given in the question are not one person companies, dormant companies, small companies and private companies having PUSC less than ₹ 100 crore.

Illustration 8.

MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded.

During the course of its audit, the auditors completed all the procedures related to audit of financial

statements. However, the auditor got stuck on one procedure because of which audit has not got concluded.

Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer:

In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit this additional information.

Hence the auditor should conclude the work without delaying because of this additional information.

Illustration 9.

NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspect transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor dealt with such matter?

Answer:

As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management

first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

Note - The auditors need to report about this matter appropriately in their CARO report.

Illustration 10.

Whether entire audit report need to read before the company in general meeting?

Answer:

No, as per section 145 of the Companies Act 2013, 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.

Illustration 11.

Regarding the general meeting for which notice is served on auditor;

i. Whether auditor is mandatorily required to be attend the said general meeting?

ii. If yes, whether he is required to attend the meeting personally?

Answer:

To first part is yes, while no in case of second, because as per section 146 of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.

Illustration 12.

Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139

Answer:

No, because as per proviso to section 148(3), no person (or firm including LLP) appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.

DESCRIPTIVE QUESTIONS

Question 1.

State the procedure for the following, explaining the relevant provisions of the companies act, 2013;

a. Appointment of first auditor, when the board of directors did not appoint the first auditor within one month from the date of registration of the company.

b. Removal of statutory auditor (appointed in last annual general meeting) before the expiry of his term.

Answer:

a. PROVISION: As per Section 139(6) of the Companies Act, 2013 the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

ANALYSIS AND CONCLUSION: From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

- ✓ Inform the members of the Company;
- ✓ Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
- ✓ Members shall at that extra ordinary meeting appoint the first auditors of the company;
- ✓ The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.

b. Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors.

PROCEDURE FOR REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM [SEC. 140(1)]:

- ✓ BOARD RESOLUTION: A BOD resolution shall be passed to remove the auditor before expiry of term.
- ✓ CG APPROVAL: An application to the Central Government for removal of auditor shall be made in Form ADT-2 within 30 days of board resolution.
- ✓ SPECIAL RESOLUTION: The company shall hold the general meeting within 60 days upon receipt of approval from the Central Government for passing the special resolution. Convene the General Meeting and pass the special resolution removing the auditor.

NOTE: An opportunity of being heard shall be given to the auditor before removing him.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, 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 60 days of receipt of approval of the Central Government for passing the special resolution.

Question 2.

One-fourth of the subscribed capital of AMC limited was held by the government of Rajasthan. Mr.

Neeraj, a chartered accountant, was appointed as an auditor of the company at the annual general meeting held on 30 April, 2018 by an ordinary resolution. Mr. Sanjay, a shareholder of the company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the companies act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said act.

Answer:

PROVISION AND EXPLANATION:

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company.

Hence, it will be treated as a non-government company. Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

CONCLUSION:

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Question 3.

EF Limited appointed an Individual firm, Naresh & company, chartered accountants, as auditors of the company at the annual general meeting held on 30 september 2022. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of Ef limited on 15 october 2022. But Naresh & company continues to function as statutory auditors of the company. Advice.

Answer:

PROVISION AND EXPLANATION:

As per sub-section (3)(d)(i) of Section 141 of the Companies Act, 2013 along with Rule 10 of the Companies (Audit and Auditors) Rule, 2014, a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh. Also, as per sub-section (4) of Section 141 of the Companies Act, 2013, where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub- section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

CONCLUSION:

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2022 i.e., after the investment made by his wife in the equity shares of EF Limited.

Question 4.

Explain how the auditor will be appointed in the following cases:

a. A government company within the meaning of section 394 of the companies act, 2013.
b. A public company whose shareholders include xyz bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Answer:

a. The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

b. In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply. The auditor shall be appointed as follows:

- ✓ The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th annual general meeting and thereafter till the conclusion of every 6th meeting.
- ✓ Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Question 5.

Examine the following situations in the light of the companies act, 2013

"Mr. Abhi", a practicing chartered accountant, is holding securities of abhiman ltd. Having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an auditor of abhiman ltd.?

Answer:

PROVISION:

As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

ANALYSIS AND CONCLUSION:

In the present case, Mr. Abhi is holding security of ₹ 1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

Question 6.

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the companies act, 2013:

a. "Mr. Prakash" is a practicing chartered accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. Want to appoint Mr. Prakash as an auditor of the company.

b. Mr. Ramesh is a practicing chartered accountant indebted to MNP ltd. For rupees 6 lakh. Directors of MNP Ltd. Want to appoint Mr. Ramesh as an auditor of the company.

c. Mrs. KVJ spouse of Mr. Kumar, a chartered accountant, is the store keeper of PRC ltd. Directors of PRC ltd. Want to appoint Mr. Kumar as an auditor of the company

Answer:

a. PROVISION:

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

ANALYSIS AND CONCLUSION:

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

b. PROVISION:

According to section 141(3)(d)(ii) of the Companies Act, 2013, a person is not eligible for appointment as auditor of any company, if he is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs.5,00,000/.

ANALYSIS AND CONCLUSION:

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 Lakh.

c. PROVISION:

As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

ANALYSIS AND CONCLUSION:

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

QUESTIONS FROM MTPS, RTPS, QPS

Question 1. **(MTP JAN'25)**

Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2022 in which he accepted the assignment. Subsequently, in January 2023, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Answer:

Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

Question 2. **(MTP SEPT'24)**

The board of directors of a limited requested its statutory auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. How will you approach to this proposal, as a statutory auditor of a ltd., taking into account the consequences, if any, of accepting this proposal?

Answer:

PROVISION:

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

ANALYSIS AND CONCLUSION:

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

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

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

Question 3. **(MTP JAN'25)**

Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of Rs.1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role?

Answer:

As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

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

Question 4. **(MTP JAN'25)**

The auditor of ABC Limited (not a government company) has resigned on 31st December, 2023, while the Financial year of the company ends on 31st March, 2024. Explain how such an auditor shall be appointed, as per the provisions of the Companies Act, 2013.

Answer:

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting (AGM), in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 5.

Mr. Ramchandra is a partner and in- charge (and certifies financial statements) of A & Associates. The firm is appointed as an auditor firm of Badri Limited (listed company). Mr. Ramchandra retires from A & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/24. In the general meeting of Badri Limited held on 15/06/24, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Badri Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

Answer:

According to section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re- appoint—

a. an individual as auditor for more than one term of five consecutive years; and
b. an audit firm as auditor for more than two terms of five consecutive years. Provided that –
   - ✓ an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
   - ✓ an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

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

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

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

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

Question 6.

CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of Liberal Ltd. (a listed company) for past ten years as on 31st March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31st March, 2027) for SM & Company?

Answer:

PROVISION: Section 139(2) of the Companies Act, 2013, provides that no listed company or a company belonging to prescribed classes of companies, shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years. The proviso to section 139(2) provides that an audit firm which has completed its terms, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

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

ANALYSIS AND CONCLUSION:

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

Question 7. **(MTP SEPT'24)**

Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

a. Chintamani is a practicing Chartered Accountant, and his spouse, Chitralekha, holds securities of Nagmani Ltd. valued at a face value amount of Rs.80,000 (with a market value of Rs.50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.

b. ani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company.

Answer:

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

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

b. PROVISION: As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel.

   ANALYSIS AND CONCLUSION: In the instant case, since Mani, real sister of Mr. Priyanshu

(Chartered Accountant) is the CFO (a KMP) of Parivar Ltd., hence, Mr. Priyanshu will be disqualified to be appointed as an auditor in the said company.

Question 8. **(MTP MAY'24)**

ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05- 2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.

Answer:

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

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

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

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

Question 9. **(RTP SEPT'24)**

XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:

a. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of Rs.4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.

b. Mr. A's relative, Ms. C, has an outstanding debt of Rs.2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013.

Answer:

According to section 141(3)(d)(ii) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs.5 Lacs.

In this scenario:

1. Mr. A's partner, Mr. B, has a debt of Rs. 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of Rs. 2 Lacs from DEF Ltd., an associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is Rs.6 Lacs (Rs.4 Lacs + Rs.2 Lacs), which exceeds the Rs.5 Lacs threshold mentioned in the provision.

Therefore, Mr. A is disqualified from being appointed as the auditor of XYZ Ltd. under section 141(3)(d)(ii) of the Companies Act, 2013, as the combined indebtedness of his partner and relative surpasses the permissible limit.

Question 10. (RTP MAY'24)

PQR Private Limited operates as a manufacturing company, generating a turnover of Rs.150 crore and holds an outstanding loan of Rs.75 crore from a public financial institution solely in the previous financial year (with a total loan availed of Rs.110 crore, but Rs.35 crore were repaid during the same year). The company's Board has delegated the authority to Chief Executive Officer (CEO) to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Mr. Nagendra (an ex- employee who is a qualified Chartered Accountant) as an internal auditor?

Answer:

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having—

a. turnover of 200 crore rupees or more during the preceding financial year; or
b. 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 shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The internal auditor may or may not be an employee of the company.

Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded 100 crore (irrespective of the fact that the outstanding loan during the year is 75 crore rupees).

Hence, the advice of CEO is not correct.

Internal Auditor may be any professional as decided by the Board and may be even an employee of the company. Hence, the Board of Directors may appoint Mr. Nagendra, an ex- employee who is a qualified Chartered Accountant, as an internal auditor.

Question 11. (RTP JAN'25)

HD Software Limited is engaged in the business of providing software services. The company appointed its statutory auditors (not the first auditor). The Board of directors of the company informed the auditor that the fees shall be fixed by the Board of directors only.

But the auditor objected to the same. Now the directors have approached you to advise them whether they can solely fix the remuneration of the auditor.

Answer:

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

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any,

incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine as they are not the first auditor.

Hence, the contention of the Board of directors that they can fix the remuneration of the auditor on their own is not valid.

Question 12. (QP MAY'24)

Stallworth Ltd., a listed company having a paidup share capital of `11 crore with a turnover of Rs.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:

a. 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?
b. 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?

Answer:

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.

a. 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.

b. 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.

Question 13. (QP MAY'24)

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?

Answer:

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.

Question 14. (QP SEPT'24)

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.

Answer:

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.

11. COMPANIES INCORPORATED OUTSIDE INDIA

ILLUSTRATIONS

Illustration 1. :

Search & find PTE. Ltd., incorporated in Singapore. The company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the company required to submit the documents as required under section 380 of the companies act, 2013.

Answer:

Yes, as per 2(42) of Companies Act, 2013, 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 shall be considered as a foreign company. Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

Illustration 2.

Examine with reference to the provisions of the companies act, 2013 whether the following companies can be treated as foreign companies:

i. A company incorporated outside India having a share registration office at Mumbai.
ii. Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

Answer:

Section 2(42) of the Companies Act, 2013 defines a "foreign company" as 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.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office.

Further, to qualify as a 'foreign company' a company must have the following features:

a. it must be incorporated outside India; and
b. it should have a place of business in India.
c. That place of business may be either in its own name or through an agent or may even be through the electronic mode; and
d. It must conduct a business activity of any nature in India.

i. Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.
ii. In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India.

QUESTIONS FROM MTPS, RTPS, QPS

Question 1. (MTP MAY'24)

Abroad ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by abroad ltd.

Answer:

PROVISION:

As per section 389 of the Companies Act, 2013,

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

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

ANALYSIS AND CONCLUSION:

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

Question 2. (MTP SEPT'24, MTP JAN'25)

Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'.

Answer:

Audit of accounts of foreign company

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

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

Question 3. (MTP JAN'25)

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

XYZ Limited discovered that it had failed to comply with certain provisions of Chapter XXII of the Companies Act, 2013, relating to the registration of foreign companies in India.

Despite this, XYZ Limited intends to file a suit against ABC Limited for payment.

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

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

Answer:

PROVISION:

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

ANALYSIS AND CONCLUSION:

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

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

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

Question 4. **(MTP MAY'24)**

Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.

Answer:

Preparation and filing of financial statements by a foreign company

According to section 381 of the Companies Act, 2013:

(i) Every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

(b) deliver a copy of those documents to the Registrar.

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

(1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.

(2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

(ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply

subject to such exceptions and modifications as may be specified in notification in that behalf.

(iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

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

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

Question 5. **(RTP SEPT'24)**

1. In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server located outside India.
2. In continuance of (1.) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Answer:

(i) According to section 2(42) of the Companies Act, 2013, "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.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to, online services such as telemarketing, telecommuting, telemedicine, education and information research.

In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in online business of telemarketing services in India having its main server outside India, Gram Pte will be treated as foreign company.

(ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Here, Prism Ltd. is advised to follow the above procedure accordingly.

Question 6. **(QP MAY'24)**

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.

Answer:

According to section 388 of the Companies Act, 2013,

No person shall issue, circulate or distribute in India any prospectus offering for subscription in

securities of a company incorporated or to be incorporated outside India, whether the company has or has not 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.

Question 7. **(QP SEPT'24)**

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.

a. Whether Ms. Rose can purchase the house in USA and continue to retain it even after returning to India?
b. Whether Ms. Rose can purchase another house in USA after returning to India?

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.

Answer:

a. 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.

b. 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 8. **(QP SEPT'24)**

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:

a. 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

b. 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?

Answer:

a. 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 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.

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:

- ✓ one or more citizens of India; or
- ✓ by one or more companies or bodies corporate incorporated in India; or
- ✓ 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.

b. 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.

DESCRIPTIVE QUESTIONS

Question 1.

a. ABC LTD., A foreign company having its Indian principal place of business at Kolkata, west Bengal is required to deliver various documents to registrar of companies under the provisions of the companies act, 2013. You are required to state, where the said company should deliver such documents.

b. In case, a foreign company does not deliver its documents to the registrar of companies as required under section 380 of the companies act, 2013, state the penalty prescribed under the said act, which can be levied.

Answer:

a. The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

b. The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non- filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 but which may extend to 5,00,000.

Question 2.

Dejy is a company limited incorporated in Singapore desires to establish a branch office at mumbai. You being a practicing chartered accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the companies act, 2013, the following:

i. Whether branch office will be considered as a company incorporated outside India.

ii. If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at mumbai.

Answer:

i. According to 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.

   Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

ii. According to section 380 (1) of the Companies Act, 2013,

1. Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:
   a. A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instrument is not in the English language, a certified translation thereof in the English language;
   b. The full address of the registered or principal office of the company;
   c. A list of the directors and secretary of the company containing such particulars as may be prescribed;
2. In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:
   - ✓ Personal name and surname in full;
   - ✓ Any former name or names and surname or surnames in full;
   - ✓ Father's name or mother's name or spouse's name;
   - ✓ Date of birth;
   - ✓ Residential address;
   - ✓ Nationality;
   - ✓ If the present nationality is not the nationality of origin, his nationality of origin;
   - ✓ Passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
   - ✓ Income-tax permanent account number (PAN), if applicable;
   - ✓ Occupation, if any;
   - ✓ Whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
   - ✓ Other directorship or directorships held by him;
   - ✓ Membership Number (for Secretary only); and
   - ✓ E-mail ID.
3. The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
4. The full address of the office of the company in India which is deemed to be its principal place of business in India;
5. Particulars of opening and closing of a place of business in India on earlier occasion or occasions.
6. Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
7. Any other information as may be prescribed.
8. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 3.

Galilio LTD. Is a foreign company in germany, and it has established a place of business in mumbai. Explain

the relevant provisions of the companies act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached alongwith the financial statements by the foreign company.

Answer:

PREPARATION AND FILING OF FINANCIAL STATEMENTS BY A FOREIGN COMPANY:

According to section 381 of the Companies Act, 2013:

1. Every foreign company shall, in every calendar year, —
   a. Make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
   b. Deliver a copy of those documents to the registrar.
2. Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:
   a. Documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
   b. The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
3. The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) given above shall not apply or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf [Section 381(1)].
4. If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
5. Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.
   a. Every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014, a list of all the places of business established by the foreign company in India as on the date of balance sheet.
   b. If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.
6. Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -
   a. Statement of related party transaction
   b. Statement of repatriation of profits
   c. Statement of transfer of funds (including dividends, if any)

   The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.
7. All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Question 4.

In the light of the provisions of the companies act, 2013, examine whether the following companies can be considered as a 'foreign company':

i. Red stone limited is a company registered in Singapore. The board of directors meets and executes business decisions at their board meeting held in India.

ii. Xen limited liability company registered in dubai has installed its main server in dubai for maintaining office automation software by cloud computing for its client in India.

Answer:

According to 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.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

a. Business to business and business to consumer transactions, data interchange and other digital supply transactions;

b. Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in india or from citizens of india;

c. Financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

d. Online services such as telemarketing, telecommuting, telemedicine, education and information research; and

e. All related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

ANALYSIS AND CONCLUSION:

1. In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.
2. In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Question 5.

JACKSON & JACKSON LLC, incorporated in Germany, is proposing to establish a business in Mumbai, India. Its official documents are in German language. Whether JACKSON & JACKSON LLC can file the required documents with registrar in the same language.

Answer:

Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013. Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to Registrar.

Question 6.

Swift pharmaceuticals, a company registered in Singapore, has started its business in India during the financial year 2016. The company has submitted all the required documents with registrar within the due date. On march 1, 2023, swift pharmaceuticals has shifted its principal office in Singapore. Does the company required to undertake any steps due to change in address of principal office.

Answer:

PROVISION: Section 380 (3)

Where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall deliver to the Registrar for registration a return containing the particulars of the alteration in the prescribed form within 30 days of such alteration. The particulars of the alteration shall be filed in form FC-2 along with prescribed fees.

ANALYSIS AND CONCLUSION:

Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

12. LIMITED LIABILITY PARTNERSHIP,2008

QUESTIONS FROM RTPS, MTPS, QPS

Question 1. **(MTP MAY'24)**

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Answer:

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

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

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

Question 2. **(MTP SEPT'24)**

Mr. Ankit sharma wants to form a LLP taking him, his wife Mrs. Archika sharma and one Huf as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

Answer:

PROVISION:

1. Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
   a. He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
   b. He is an undischarged insolvent; or
   c. He has applied to be adjudicated as an insolvent and his application is pending.
2. Further, Section (2)(1)(e) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—
   a. An LLP registered under this Act;
   b. An LLP incorporated outside India; and
   c. A company incorporated outside India, but does not include—
      a) A corporation sole;
      b) A co-operative society registered under any law for the time being in force; and
      c) Any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

CONCLUSION:

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

Question 3. **(MTP MAY'24)**

Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of Rs.1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

Answer:

PROVISION:

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

CONCLUSION:

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

Question 4. **(MTP SEPT'24)**

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

Answer:

According to section 24(3) of the Limited Liability Partnership Act, 2008, where a person has ceased to be a partner of a LLP (hereinafter referred to as 'former partner'), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless:

a. the person has notice that the former partner has ceased to be a partner of the LLP; or
b. notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

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

Question 5. **(MTP SEPT'24)**

M/s Vardhman steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan steels is registered with Indian partnership act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether m/s Vardhman steels LLP is liable to change its name under the provisions of limited liability act, 2008?

Answer:

PROVISION:

Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

a. Undesirable; or
b. Identical or too nearly resembles to that of any other 'LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999'.

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

a. That of any other LLP or a company; or
b. A registered trademark of a proprietor under the Trademarks Act, 1999

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

ANALYSIS & CONCLUSION:

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

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

Question 6. (MTP JAN'25)

Kanik, priyansh, abhinav and bhawna were partners in singh jain & associates llp. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to roc by llp or abhinav. Whether abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

Answer:

PROVISION:

According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

a. The person has notice that the former partner has ceased to be a partner of the LLP; or
b. Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

CONCLUSION:

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

Question 7. (MTP JAN'25)

Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008.

Answer:

Financial Year:

According to section 2(1)(l) of the Limited Liability Partnership Act, 2008, "Financial year", in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

Question 8. (MTP SEPT'24, MTP JAN'25)

Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability

Partnership Act, 2008.

Answer:

Small limited liability partnership

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

a. the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and
b. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or
c. which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Question 9. **(RTP MAY'24)**

Mohit is a creditor of ABC LLP. He has a claim of Rs.10,00,000 against the LLP. However, the assets of the LLP are valued at only Rs.7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of Rs.3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

Answer:

A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence,

the creditors of ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit can not claim his deficiency of Rs.3,00,000 from the partners of ABC LLP.

Question 10. **(RTP JAN'25)**

Amit and Priya are partners in XYZ LLP, a consulting firm. Recently, Priya moved to a new address but forgot to notify the LLP within the required period. A month later, Amit's cousin, Ramesh, expressed interest in joining XYZ LLP as a partner, and after a few discussions, he was accepted as a new partner. However, XYZ LLP did not immediately update the Registrar of Companies (RoC) regarding Priya's address change or Ramesh's admission as a partner. Two months after Ramesh joined, the LLP filed a notice with the RoC about these changes.

Advise the LLP about the default on part of LLP about the non compliance in respect to not informing the ROC about:

1. Priya's address change
2. Ramesh's admission as a partner.

Answer:

PROVISION:

According to section 25 of the Limited Liability Partnership Act, 2008,

a. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.

b. A LLP shall—
   - ✓ where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and
   - ✓ where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.

c. A notice filed with the Registrar under sub-section (2)—
   - ✓ shall be in such form and accompanied by such fees as may be prescribed;
   - ✓ shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and
   - ✓ if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

ANALYSIS & CONCLUSION:

a. Priya's Address Change: Under the provision, Priya was required to inform XYZ LLP of her address change within 15 days of the move. Following that, XYZ LLP was required to file a notice with the RoC within 30 days of being notified of Priya's new address. As Priya did not inform the LLP about change of address and consequently LLP did not file a notice regarding the change in address of Priya with the Registrar, XYZ LLP is not in compliance with the required timeline.

b. Ramesh's Admission as a Partner: For new partners, XYZ LLP must file a notice with the RoC within 30 days of a person becoming a partner. This notice should include Ramesh's consent statement, signed by him and authenticated as prescribed. The delay in filing means XYZ LLP did not meet the 30-day requirement.

Question 11. **(RTP SEPT'24)**

XYZ LLP was registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a name that was later found to be identical to an existing company's name, XYZ OPC Pvt Ltd. This similarity was not noticed at the time of registration.

Explain the provisions of the Limited Liability Partnership Act, 2008, in respect of the following:

a. When the name of LLP is identical.

b. Formalities with the Registrar of Companies after name change of LLP.

Answer:

According to section 17 of the LLP Act, 2008,

(i) Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to-
   (a) that of any other LLP or a company; or
   (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999 as likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,
   Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

(ii) Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the

Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

Question 12. (QP MAY'24)

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.

Answer:

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 filling 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.

Question 13. (QP MAY'24)

Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008.

Answer:

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:
   a. such partner or employee of an LLP has provided useful information during investigation of such LLP; or
   b. 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).

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.

Question 14. **(QP SEPT'24)**

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.

Answer:

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- Rs.100 per day subject to maximum Rs.1,00,000
   Every Designated Partners – Rs.100 per day subject to maximum Rs.50,000.

Question 15. **(QP SEPT'24)**

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?

Answer:

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.

DESCRIPTIVE QUESTION

Question 1.

There is an LLP by the name ram infra development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and
Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as designated partner. Explain in the light of limited liability partnership act, 2008 whether LLP can do so?

Answer:

PROVISION:

According to Section 7 of LLP Act, 2008 every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

CONCLUSION:

Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Question 2.

Mr. Mudit is the creditor of Devi ram food circle LLP. He has a claim of ₹10,00,000 against the LLP but the worth of the assets of LLP are only ₹7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹3,00,000. Whether by virtue of provisions of limited liability act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi ram food circle LLP?

Answer:

PROVISION:

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

CONCLUSION:

Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

13. GENERAL CLAUSES ACT

QUESTION FROM RTPS, MTPS, QPS

Question 1.

ABC Limited operates a factory situated near a river. As per a recent Central Act, factories must be located at least 5 kilometers away from any river. A dispute arises when an environmental agency claims that ABC Limited's factory is only 4.5 kilometers away from the river, while ABC Limited contends that the distance is 5.3 kilometers as per the road distance measured along the winding path leading to the river.

Based on the provisions of the General Clauses Act, 1897, advise whether the contention of ABC Limited is correct.

Answer:

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

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

Therefore, ABC Limited's contention is not correct.

Question 2. **(MTP SEPT'24)**

Define the following with reference to the provisions of the General Clauses Act, 1897:

a. Measurement of Distances

b. Duty to be taken pro rata in enactments

Answer:

a. Measurement of Distances

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

b. Duty to be taken pro rata in enactments

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

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

Question 3. **(MTP SEPT'24)**

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

In 2023, the Director of Digital Communications, Mr. Arjun Patel, was appointed to lead the

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

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

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

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

Answer:

Official Chiefs and subordinates

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

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

Question 4. **(MTP SEPT'24)**

Define the term 'Official Gazette' as per the provisions of the General Clauses Act, 1897.

Answer:

Official Gazette

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

a. The Gazette of India, or

b. The Official Gazette of a state.

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

Question 5. **(MTP MAY'24)**

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

Give your answer with reference to the provisions of the General Clauses Act, 1897.

Answer:

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

a. properly addressing
b. pre-paying, and
c. posting by registered post.

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

In the given case, the Income Tax Department sent the show cause notice properly by a registered post at the address which was in the records of the department.

Hence, it was a proper service of notice. Further, refusal by current owner of house to accept the notice, will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address.

Therefore, Income Tax Department is correct in its decision.

Question 6. **(MTP MAY'24)**

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.

Answer:

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

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

Question 7. **(MTP MAY'24)**

Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

Answer:

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

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

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

Question 8. (MTP MAY'24)

Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023.

Answer:

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to". In the given instance, Sheesham Limited declared dividend for its shareholder in its Annual General Meeting held on 8th August 2023. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 9th August 2023 to 7th September 2023. In this series of 30 days, 8th August 2023 will be excluded and last 30th day, i.e. 7th September 2023 will be included. Accordingly, Sheesham Limited will be required to pay dividend within the time frame of 9th August 2023 and 7th September 2023 (both days inclusive).

Question 9. (MTP SEPT'24)

Komal ltd. Declares a dividend for its shareholders in its AGM held on 27th september, 2022. Referring to provisions of the general clauses act, 1897 and the companies act, 2013, advice:

a. The dates during which Komal ltd. Is required to pay the dividend?

b. The dates during which Komal ltd. Is required to transfer the unpaid or unclaimed dividend to unpaid dividend account

Answer:

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

a. Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e., from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e., 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).

b. Transfer of unpaid or unclaimed divided: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA).

CONCLUSION:

Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

Question 10. **(MTP MAY'24, MTP JAN'25)**

Explain the following with reference to the provisions of the General Clauses Act, 1897:

a. Movable Property

b. Oath

Answer:

a. **Movable Property**

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

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

b. **Oath**

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

Question 11. **(MTP JAN'25)**

What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897.

Answer:

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

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

Question 12. **(MTP JAN'25)**

Explain the following with reference to the provisions of the General Clauses Act, 1897:

a. Person

b. Document

Answer:

a. Person

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

b. Document

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

Question 13. **(RTP MAY '24)**

Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property?

Answer:

According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, 'Immovable Property' shall include:

a. Land,
b. Benefits to arise out of land, and
c. Things attached to the earth, or
d. Permanently fastened to anything attached to the earth.

In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.

Question 14. **(RTP SEPT'24)**

Mr. Chaggan Lal is an importer dealing in luxury perfumes. Recently, a new enactment was passed which imposes a duty of 15% on the value of luxury goods, including perfumes.

Now Mr. Chaggan Lal has approached you to explain to him the provisions in relation to 'Duty to be taken pro rata in enactments' of the General Clauses Act, 1897. Also, help him to calculate the amount of duty on a Shipment of 100 bottles of perfumes, each valued at $50.

Answer:

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

The amount of duty would be= (100* 50)*15%= $750.

Question 15. **(RTP JAN'25)**

The Parliament recently passed the Environment Protection Amendment Act, 2024, to strengthen regulations on industrial waste disposal. The Act specified the commencement date as 1st September, 2024. The President gave assent to the Act on 15th July, 2024.

Green Earth Limited, an industrial company, is uncertain about when the provisions of the Environment Protection Amendment Act, 2024, will start to apply. The company's legal team has raised question on whether they need to immediately comply with the new regulations or if they have a grace period until the commencement date. Give your in reference to the provisions of the General Clauses Act, 1897.

Answer:

According to 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 Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

In the given question, the Environment Protection Amendment Act, 2024, received assent of President of India on 15th July, 2024. The commencement date is prescribed as 1st September 2024. Accordingly, the Environment Protection Amendment Act, 2024, shall come into enforcement 1st September, 2024.

Question 16. (QP MAY'24)

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.

Answer:

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.

Question 17. (QP SEPT'24)

Mr. M issued a cheque of Rs.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.

Answer:

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 18. (QP MAY'24)

State the provisions of the General Clauses Act, 1897 relating to 'Gender and Number'.

Answer:

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:

a. Words Importing the masculine gender shall be taken to include females, and
b. 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 19. **(QP SEPT '24)**

Referring to the provisions of the General Clauses Act, 1897, answer the following questions:

a. Whenever a new law is enacted by the Government of India, what shall be its date of coming into force?
b. 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.

Answer:

a. 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.
b. 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 20. **(QP SEPT '24)**

a. 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?
b. 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.

Answer:

a. 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.

b. 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.

DESCRIPTION QUESTIONS

Question 1.

What is "financial year" under the general clauses act, 1897?

Answer:

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

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

Hence, in view of both the above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March.

Question 2.

What is "Immovable Property" under the general clauses act, 1897?

Answer:

According to Section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

i. Land,
ii. Benefits to arise out of land, and
iii. Things attached to the earth, or
iv. Permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Question 3.

As per the provisions of the companies act, 2013, a whole time key managerial personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the section 13 of the general clauses act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Answer:

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. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies 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. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Question 4.

A notice when required under the statutory rules to be sent by "registered post acknowledgment due" is instead sent by "Registered Post" only. Whether the protection of presumption regarding serving of notice by "Registered Post" under the general clauses act is tenable? Referring to the provisions of the general clauses act, 1897, examine the validity of such notice in this case.

Answer:

PROVISION:

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. Properly addressing,
ii. Pre-paying, and
iii. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

ANALYSIS AND CONCLUSION:

Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181, a notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenable nor based upon sound exposition of law.

Question 5.

X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the general clauses act, 1897.

Answer:

PROVISION:

'Immovable Property' shall include:

i. Land,
ii. Benefits to arise out of land, and
iii. Things attached to the earth, or
iv. Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

ANALYSIS AND CONCLUSION:

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Question 6.

What is the Meaning of Service by Post as Per Provisions Of The General Clauses Act, 1897?

Answer:

"Meaning of Service by post" [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. Properly addressing
ii. Pre - paying, and
iii. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Question 7.

'REPEAL' of provision is different from 'DELETION' of provision. Explain as Per the GENERAL CLAUSES ACT, 1897.

Answer:

In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Question 8.

The companies act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2022, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the general clauses act, 1897?

Answer:

PROVISION:

Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

ANALYSIS AND CONCLUSION:

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October, 2022 will be excluded and 6th November 2022 shall be included, i.e., 31st October, 2022 to 6th November, 2022 (both days inclusive).

Question 9.

Referring to the provisions of the general clauses act, 1897, find out the day/ date on which the following act/regulation comes into force. Give reasons also,

1. An act of parliament which has not specifically mentioned a particular date.
2. The securities and exchange board of India (issue of capital and disclosure requirements) (fifth amendment) regulations, 2015 was issued by SEBI vide notification dated 14th august, 2015 with

effect from 1st January, 2016.

Answer:

PROVISION:

1. According to 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 President in case of an Act of Parliament.
2. If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

ANALYSIS AND CONCLUSION:

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the Gazette.

14. INTERPRETATION OF STATUTES

QUESTION FROM RTPS, MTPS, QPS

Question 1. **(RTP JAN'25)**

At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'?

Answer:

Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and

(ii) 'Contemporanea Expositio est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

(iii) Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

(iv) Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Question 2. **(RTP SEPT'24)**

Imagine you are a legal advisor for a company drafting a new contract. One of the clauses in the contract states: "Notwithstanding anything contained in any other provisions of this agreement, the company reserves the right to terminate the agreement without notice if there is a breach of confidentiality by the employee." Explain to the management of the company the meaning of a non-obstante clause in legal documents and its effect on overriding other provisions with reference to decided case law.

Answer:

A clause that begins with the words "notwithstanding anything contained" is called a non-obstante clause. Unlike the "subject to" clause,

the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah v. Pakari Lakshman AIR 1965 AP 220)

In conclusion, a non-obstante clause plays a crucial role in legal drafting by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty and consistency in judicial interpretation.

Question 3. **(QP MAY'24, MTP JAN'25)**

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?

Answer:

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. **(MTP SEPT'24)**

Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897.

Answer:

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

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

(1) Publish of proposed draft rules/ bye- laws: The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) To publish in the prescribed manner: The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) Notice annexed with the published draft: There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) Consideration on suggestions/objections received from other authorities: The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) Notified in the official gazette: The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Question 5. **(RTP MAY'24, MTP MAY'24)**

Explain interpretation of statute aid- 'Read the Statute as a Whole'.

Answer:

Read the Statute as a Whole:

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony

with other provisions- if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

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

Question 6. **(MTP MAY'24)**

In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes.

Answer:

Heading and Title of a Chapter

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

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

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

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

Question 7. **(MTP JAN'25)**

a. What is the effect of proviso? Does it qualify the main provisions of an enactment?

b. Does an explanation added to a section widen the ambit of a section?

Answer:

a. Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narian Sons Ltd. v. Commissioner of Sales Tax AIR (1955) S.C. 765]

b. Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 8. **(MTP SEPT'24)**

Differentiate mandatory provision from a directory provision. What factors decide whether a provision is directory or mandatory?

Answer:

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

such consideration as:

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

Question 9. **(MTP SEPT'24)**

When can the preamble be used as an aid to interpretation of a statute?

Answer:

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails. The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

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

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

Question 10. **(MTP JAN'25)**

Write short note on:

(i) Proviso

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents.

Answer:

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

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only

embraces the field which is covered by the main provision.

(ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Question 11. **(MTP JAN'25)**

Write short notes on the following in understanding definitions while interpreting statutes:

(i) Ambiguous definitions

(ii) Definitions subject to a contrary context

Answer:

(i) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

Question 12. **(MTP MAY'24)**

In what way are the following terms considered as external aid in the interpretation of statutes:

(i) Historical Setting

(ii) Use of Foreign Decisions

Answer:

(i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Question 13. **(MTP SEPT'24)**

Explain the Doctrine of Contemporanea Expositio.

Answer:

Doctrine of Contemporanea Expositio

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

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

Question 14. **(QP MAY'24)**

Explain the term "Generalia Specialibus Non Derogant", in connection with Interpretation of Statues.

Answer:

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 15. **(QP SEPT'24)**

Explain the rule which suggests that the 'Plain word requires no explanation' and 'Technical words be understood in technical sense only'.

Answer:

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).

DESCRIPTION QUESTIONS

Question 1.

Explain the rule in 'heydon's case' while interpreting the statutes quoting an example?

Answer:

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an Act:

1. What was the law before making of the Act,
2. What was the mischief or defect for which the law did not provide,
3. What is the remedy that the Act has provided, and
4. What is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

Question 2.

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a statute. What are the duties of a court in this regard?

Answer:

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Question 3.

Gaurav textile company limited has entered into a contract with a company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Answer:

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there Is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Question 4. **(QP SEPT'24)**

How will you interpret the definitions in a statute, if the following words are used in a statute?

a. Means

b. Includes

Give one illustration for each of the above from statutes you are familiar with.

Answer:

Interpretation 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 5.

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Answer:

GRAMMATICAL INTERPRETATION AND ITS EXCEPTIONS: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

a. Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

b. If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Question 6.

Explain How 'DICTIONARY DEFINITIONS' can be of great help in interpreting/ constructing an act when the statute is ambiguous.

Answer:

Dictionary Definitions: First we refer 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 7.

Preamble does not over-ride the plain provision of the act. Comment. Also give suitable example.

Answer:

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear.

However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [GullipoliSowria Raj v. BandaruPavani, (2009)1 SCC714].

15. FEMA

ILLUSTRATIONS

Illustration 1.

Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Answer:

As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

Illustration 2.

Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021- 2022?

Answer:

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020- 2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Illustration 3.

Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Answer:

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section

2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

Illustration 4.

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer:

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

DESCRIPTIVE QUESTIONS:

Question 1.

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Answer:

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)].

PROVISION:

Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi).

ANALYSIS AND CONCLUSION:

Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Question 2.

State which kind of approval is required for the following transactions under the foreign exchange management act, 1999:

a. X, a film star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign exchange Drawal to the extent of us dollars 20,000 is required for this purpose.
b. R wants to get his heart surgery done at United Kingdom. Up to what limit foreign exchange can be drawn by him and what are the approvals required?

Provision: approval to the following transactions under FEMA, 1999:

Answer:

a. Foreign Exchange Drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.
b. Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However, in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

Question 3.

Suresh resided in India during the financial year 2020-2021. He left India on 15th July 2021 for Switzerland for pursuing higher studies in biotechnology for 2 years. What would be his residential status under the foreign exchange management act, 1999 during the financial years 2021- 2022 and 2022-2023?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required foreign exchange and, if so, under what conditions?

Answer:

PROVISION:

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 preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period.

ANALYSIS AND CONCLUSION:

In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2021- 2022 till 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

QUESTIONS FROM MTPs, RTPs, QPs:

Question 1. **(RTP MAY'24)**

Mr. Shivesh, an Indian National desires to obtain Foreign Exchange for the following purposes:
Remittance of US Dollar 50,000 out of winnings on a lottery ticket. US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.
Advise him whether he can get Foreign Exchange and if so, under what conditions?

Answer:

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) Remittance out of lottery winnings is prohibited as the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh cannot withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Question 2. **(RTP SEPT'24)**

Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather,
who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets.

Answer:

Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), Mr. Arjun, being a resident in India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.

Clarifications under section 6(4) of FEMA

1. Foreign Currency Accounts
   - Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.
2. Income and Investments
   a. Income earned through employment, business, or vocation outside India while Mr. Arjun was a

non-resident.

b. Investments made abroad during his non-resident status.

c. Gifts or inheritance received from a non-resident Indian.

3. Foreign Exchange and Income therefrom

a. Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.

4. Utilization of Assets After Return to India

a. Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.

b. He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.

Question 3.

Ravi, an Indian citizen, works as a software engineer for an international company. During the previous financial year (2023-2024), Ravi resided in India for 200 days. However, in April of the current financial year, he accepted a job offer in Canada and left India with a long-term work visa, planning to settle in Canada indefinitely. Analyse the residential status of Ravi for the financial year 2024-2025, as per the provisions of the Foreign Exchange Management Act, 1999.

Answer:

As per section 2(v) of the Foreign Exchange Management Act, 1999, the term 'person resident in India' means the following entities:

A person who resides in India for more than 182 days during the preceding financial year. The following persons are not persons resident, in India even though they may have resided in India for more than 182 days.

A. A person who has gone out of India or stays outside India for any of the three purposes given below,

B. A person who has come to or stays in India otherwise than for any of the three purposes given below;

Three Purposes

(1) For or on taking up Employment

(2) For carrying on a business or Vocation

(3) For any other purpose in such circumstances as would indicate stay for an uncertain period.

Ravi's Residential Status: Ravi resided in India for more than 182 days in the preceding financial year, which would typically qualify him as a "person resident in India." However, his decision to leave India for long- term employment in Canada changes his status.

According to the provision, a person who has left India for the purpose of employment abroad is not considered a "person resident in India" even if they meet the 182-day requirement. Thus, Ravi does not qualify as a resident for the current financial year.

Question 4. **(MTP SEPT'24)**

Mr. Sane, an Indian national desires to obtain foreign exchange for the following purposes:

i. Remittance of us dollar 50,000 out of winnings on a lottery ticket.

ii. Us dollar 100,000 for sending a cultural troupe on a tour of U.S.A. Advise him whether he can get foreign exchange and if so, under what conditions?

Answer:

PROVISION: Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for Drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

i. In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.

ii. Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

CONCLUSION: In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Question 5. **(MTP MAY'24, MTP SEPT'24, MTP JAN'25)**

Referring to the provisions of the foreign exchange management act, 1999, state the kind of approval required for the following transactions:

I. M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.

II. P requires U.S. $ 2,000 for payment related to call back services of telephones.

Answer:

PROVISION:

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central

Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

CONCLUSION: Accordingly,

I. It is a current account transaction, where M is required to take approval of the Central Government for Drawal of foreign exchange for remittance of hire charges of transponders.

II. Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose DEPOSIT.

Question 6. **(MTP SEPT'24)**

i. Mr. P has won a big lottery and wants to remit us dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the foreign exchange management act, 1999.

ii. Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Answer:

PROVISION: REMITTANCE OF FOREIGN EXCHANGE (SECTION 5 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

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

1. Transactions for which Drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for Drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawal of foreign exchange.
   i. Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
   Hence Mr. P cannot withdraw foreign exchange for this purpose.
   ii. "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

CONCLUSION:

Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, Authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

Question 7. (MTP MAY'24)

Mr. Rohan, an Indian resident Individual desires to obtain foreign exchange for the following purposes:

a. Us$ 120,000 for studies abroad on the basis of estimates given by the foreign university.

b. Gift remittance amounting us$ 10,000.

Advise him whether he can get foreign exchange and if so, under what condition(s)?

Answer:

PROVISION:

a. Remittance of Foreign Exchange for studies abroad:
   Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad.
   CONCLUSION:
   In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.

b. Gift remittance exceeding US $ 10,000:

Under the provisions of section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI.

CONCLUSION:

In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

Question 8. **(RTP SEPT'24)**

Explain the meaning of term 'Current Account transactions' as defined under the Foreign Exchange Management Act, 1999.

Answer:

According to section 2(j) of the Foreign Exchange Management Act, 1999, 'Current Account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

a. payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
b. payments due as interest on loans and as net income from investments.
c. remittances for living expenses of parents, spouse and children residing abroad, and
d. expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Question 9.

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for Payment of commission of U.S. $ 20,000 on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.

Answer:

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

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

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

Question 10. **(MTP SEPT'24, MTP JAN'25)**

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

a. Authorised person

b. Currency

Answer:

a. Authorised person

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

b. Currency

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

Question 11. (MTP SEPT'24)

Explain the meaning of term 'Foreign Exchange' as per the provisions of the Foreign Exchange Management Act, 1999.

Answer:

According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:

a. Deposits, credits and balances payable in any foreign currency,

b. Drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in indian currency but payable in any foreign currency,

c. Drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Question 12. (MTP MAY'24)

Ms. Prabha, a classical dancer of Bharatnatyam, wants to go to the USA for a performance. In this connection she requires foreign exchange drawal of US$ 50,000. Explain Ms. Prabha, the provision of the Foreign Exchange Management Act, 1999, in respect of permission required for such drawal of foreign exchange.

Answer:

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

Question 13. (MTP MAY'24)

Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides

coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing

the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

Answer:

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

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

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

Question 14. **(MTP MAY'24)**

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

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

Answer:

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

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

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

Question 15. **(QP MAY'24)**

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 10day 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.

Answer:

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

(ii)outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. in

(iii) Paris, as he has gone out of India for or on taking up employment outside India.

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

(v) 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 16. **(QP MAY'24)**

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.

Answer:

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.

Question 17. **(QP SEPT'24)**

Mitali Diamonds Limited is a company engaged in the business of cutting, polishing and trading of diamonds in and outside India. The company exports the diamonds to USA. For the last five financial years, the foreign exchange earned by the company in exporting diamonds is as under:

FY 2023-24	USD 1,25,000
FY 2022-23	USD 1,10,000

FY 2021-22	USD 95,000
FY 2020-21	USD 98,000
FY 2019-20	USD 93,000

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

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

Answer:

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.

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