CA INTER

AIR1CA CAREER INSTITUTE

CORPORATE & OTHER LAWS

SEP 2025 & JAN 2026 EXAMS

Question Bank

Coverage of All Questions with Solutions as per ICAI

- ☑ Study Material
- ☑ Revision Test Papers (RTP)
- ☑ Past Exam Papers
- ☑ Mock Test Papers (MTP)

Corporate & Other Laws

Edition: July 2025

CA INTER

AIR1CA CAREER INSTITUTE

CORPORATE & OTHER LAWS

About the Question Bank

नमस्कार दोस्तों, राधे राधे !!

This Question Bank is prepared by **CA Madhav Heda (AIR 8)**. He completed his articleship with **Deloitte Haskins & Sells LLP** in Statutory Audit Domain and **KPMG** in Deal Advisory - M&A Tax and Private Equity Domain. After qualifying, he also turned down an offer from **BCG** to follow his passion for teaching.

This Question Bank contains **550+ Questions** which are **bifurcated topic wise** in each chapter. This Question Bank is fully amended for Sep 25 & Jan 26 Exams.

Key words and **Key points** as per ICAI are **Highlighted** in the answers of all chapters. **Source** for each question has been **provided** in detail after Index of the Question Bank.

All questions of this Question Bank has been **solved in the lectures** in detail. It is recommended to practice all questions of this Question Bank after referring the concept book and revision videos. This will help you to develop a strong grasp over the subject and be well-prepared for the exams.

Best wishes

CA Madhav Heda

INDEX

AIR1CA CAREER INSTITUTE

CORPORATE & OTHER LAWS

Scan this QR code to Join Our Telegram Channel for Free Notes, Question Bank, Doubts and Updates

AIR1CA Career Institute

CA Madhav Heda

SOURCE OF QUESTIONS

AIR1CA CAREER INSTITUTE

CORPORATE & OTHER LAWS

Chapter	SM	Past Papers	RTP	MTP
Preliminary	-	-	1(M22)	-
Incorporation of Company & Matters Incidental Thereto	4, 7, 8, 11, 16, 21, 23, 25, 32, 34, 35, 37, 41, 43, 48, 50	1(N19), 2(M25), 5(M21), 10(N22), 11(M22), 12(N22), 17(M23), 24(M21), 29(N20), 33(J25), 36(N20), 40(M22), 42(N20), 45(M19), 46(N23), 48(J21), 51(M22)	9(N20), 13(M22), 15(M19), 19(M21), 22(M22), 27(N22), 28(S24), 31(N19), 39(N18)	3(N19), 6(M21), 14(M24), 18(J25), 20(M22), 26(N18), 30(N21), 38(M21), 44(M21), 47(S24), 49(M20)
Prospectus and Allotment of Securities	1-2, 6, 9, 14-16, 18, 20, 23-27, 29, 33, 39	1(N19), 4(M25), 5(M22), 7(M21), 9(N18), 13(J25), 14(N21), 17(M25), 21(M23), 22(M18), 24(M19), 28(J21), 30(M21), 32(N18), 35(J21), 36(N23), 37(M24), 38(S24), 40(N18)	8(N18), 11(M21), 12(J25), 31(M25)	3(N18), 10(M19), 19(M18), 34(M22),
Share Capital and Debentures	1, 4, 8, 10, 12, 17, 23, 24, 26, 33, 39, 42, 44	1(J21), 2(N20), 3(M18), 7(M23), 9(M22), 14(N19), 15(M24), 16(N18), 17(M23), 18(N21), 20(S24), 22(M24), 27(N22), 28(M22), 29(N20), 31(M21), 32(N19), 34(M19), 35(M18), 38(J21), 40(J25), 42(N21), 43(N22)	5(J25), 6(S25), 13(N18), 19(N23), 21(N18), 25(N21), 30(M18), 37(N18)	11(M18), 36(M21), 41(N18)
Acceptance of Deposits by companies	1, 8-10, 12, 13, 18, 19, 22, 25	1(N19), 4(M23), 5(M21), 6(M25), 7(J21), 12(M18), 13(N18), 14(J25), 15(M24), 16(N21), 17(N23), 18(J21), 21(S24), 22(M22), 23(N22), 24(N20)	3(M25), 20(M19)	2(N22), 11(N21)
Registration of Charges	1, 5, 7, 11, 16, 19, 20, 22	1(M25), 2(J21), 3(M25), 4(N20), 8(S24), 9(M22), 12(M23), 13(N22), 14(M19), 15(M25), 18(N18)	10(J25)	6(N21), 17(M24), 21(N18)
Management and Administration	1-3, 5, 7, 8, 13, 16, 20, 23, 24, 28-31, 34, 37, 39-43, 48, 49, 53, 60, 65, 67, 68	6(M18), 11(M18), 13(N23), 14(M21), 18(N23), 22(S24), 25(S24), 26(N22), 29(N21), 33(N23), 35(M22), 36(N19), 39(J21), 46(N20), 47(M24), 50(M24), 51(M19), 54(M18), 56(N18), 58(N18), 59(M24), 61(J25), 62(M19), 63(N21), 68(J21), 69(M22), 70(M21)	4(N23), 10(M25), 17(N19), 19(M21), 21(M19), 55(M24), 57(N19), 64(N22)	9(M24), 12(S24), 15(M21), 27(S24), 32(N21), 44(M24), 45(M22), 52(N19), 66(M24)
Declaration and Payment of Dividend	2, 3, 7, 16, 19, 20, 22, 23, 25, 27	3(S24), 4(N19), 5(M23), 9(M24), 10(N22), 11(N20), 12(M21), 14(J25), 15(J21), 16(M22), 20(M19), 22(N21), 25(N19), 26(N20), 27(N18)	6(M22), 8(M20), 13(M19), 17(M18), 21(N23)	1(J25), 18(J25), 24(M18), 28(M19)

SOURCE OF QUESTIONS

AIR1CA CAREER INSTITUTE

CORPORATE & OTHER LAWS

Chapter	SM	Past Papers	RTP	MTP
Accounts of Companies	1, 4, 5, 11, 16-18, 20, 23, 25-27, 31, 36, 37, 39	6(M21), 9(S24), 10(M25), 11(N19), 12(M24), 14(M22), 15(N21), 18(J21), 26(N18), 27(N22), 30(M23), 31(M19), 32(M24), 33(S24), 35(M25), 38(N20), 40(J25), 42(M18), 43(M21), 45(M22), 46(N23), 49(J21), 50(M21/N23)	3(N22), 7(M23), 13(M25), 19(M18), 21(M23), 28(N22), 34(N18), 41(N18), 44(M18), 48(N21)	2(S24), 8(M22), 22(M23), 24(J25), 29(N18), 47(N22), 51(M18)
Audit and Auditors	2-6, 13, 15, 16, 18, 21, 23, 25, 38, 40, 42, 44, 46, 52	1(J21), 6(N18/N23), 7(N23), 12(N22), 15(M19), 22(M21/N21), 23(N21), 24(M24), 26(M25), 28(J25), 29(M18), 30(M22), 34(S24), 36(N18), 37(N20), 43(M24), 48(M21), 49(J25), 50(M23), 51(M22)	8(N18), 14(S24), 19(M18), 31(J25), 32(M25), 33(N22), 35(N18), 47(N18)	9(N22), 10(M22), 11(M22), 17(M21), 20(N19), 27(M21), 39(N18), 41(M18), 45(N18)
Companies Incorporated Outside India	1, 4, 8-12, 15, 18	2(N18), 3(N19), 5(M25), 6(J25), 7(S24), 14(M24)	-	13(J25), 16(S24), 17(J25)
Limited Liability Partnership Act, 2008	2, 3, 7, 9, 10, 14	12(S24), 13(M25), 19(M24), 20(S24), 21(M24), 22(J25), 23(M25)	6(S25), 8(S24), 15(J25), 17(M25)	1(S24), 4(M24), 5(S24), 11(J25), 16(J25), 18(S24)
General Clauses Act, 1897	4, 6, 9, 20, 23, 26, 27, 32, 45, 46	1(J21), 2(N21), 5(N21), 9(M18), 10(N21), 11(J25), 12(M18), 13(J25), 14(N21), 15(N19), 16(N22), 19(J21), 20(M19), 22(S24), 23(N18), 26(M19), 28(M21), 30(N20), 31(M24), 33(N23), 34(M25), 36(M21), 39(M24), 41(M25), 43(N18), 44(M22), 45(M18), 51(N22), 52(M23), 54(S24)	8(M24), 17(M25), 21(J25), 24(N22), 35(N23), 38(S24), 49(M20), 53(N18)	3(M21), 7(M22), 18(J25), 25(M24), 29(J25), 37(N21), 40(S24), 42(N18), 47(N18), 48(M19), 50(M24)
Interpretation of Statutes	3, 4, 14, 17, 23, 24, 27, 33, 36, 37, 39	1(N19), 2(M24), 6(S24), 7(J25), 8(J21), 9(M24), 13(N23), 14(N21), 19(J25), 20(M25), 21(M23), 24(M23), 29(S24), 30(M19), 31(M25), 32(M22), 37(J21), 38(N21)	10(N23), 12(S24), 15(S25), 16(M22), 34(M19), 35(M24)	5(M18), 11(N18), 18(N22), 22(M19), 25(M24), 26(N18), 28(J25)
Foreign Exchange Management Act, 1999	2, 3, 6, 11, 12, 15-18	1(M25), 4(M24), 8(J25), 19(S24), 20(M24), 22(S24), 23(M25), 24(J25)	5(J25), 21(M25), 25(S24)	7(J25), 9(M25), 10(J25), 13(S24), 14(S24)

CHAPTER - 1
Preliminary

Promoter Definition

Question 1

Mr. Abhi is a Chartered Accountant and 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. Abhi can be classified as the Promoter of XYZ Limited? Please 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. Abhi 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 too only in a **professional capacity**, he will **not be classified as a Promoter** of XYZ Limited.

Note: Remaining Questions of this Chapter are covered in Relevant Chapters.

CHAPTER - 2
Incorporation of Company & Matters Incidental Thereto

Incorporation of Company [Section 7]

Question 1

ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during internal audit initiated by the company's new CFO, Mr. Z.

Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information.

or

Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard.

Answer

Order of the Tribunal: According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing **false or incorrect information** or representation or by **suppressing** any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any **fraudulent** action, **Tribunal** may, on an application made to it, on being satisfied that situation so warrant-

(a) pass such orders, as it may think fit, for **regulation** of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be **unlimited**; or

(c) direct **removal** of the name of the company from the register of companies; or

(d) pass an order for the **winding up** of the company; or

(e) pass such other orders as it may deem fit.

However, before making any order under this sub-section,-

(i) the company shall be given a **reasonable opportunity** of being heard in the matter; and

(ii) the Tribunal shall take into **consideration** the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Question 2

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

(i) Amrish (himself)

(ii) Robert (He is a college friend of Amrish. He is a Citizen of UK. He has technical expertise and in order to incorporate the company visited India on a valid Business Visa).

(iii) Eliza (She is college friend of Amrish. She is a Citizen of Netherlands and has good business contacts in European Countries which will be immensely useful in marketing of the company's products).

(iv) Goma Devi (Mother of Amrish, who is illiterate. She has recently sold part of her agricultural land and has received ₹ 15 crores, out of which she agreed to subscribe ₹ 5 crores in the share capital of the proposed company).

(v) Goodwork Technologies LLP (A Limited Liability Partnership having the expertise in the field of remote sensing devices).

(vi) Mohit Electronics Private Ltd. (A Private Limited Company having expertise in the field of providing Electronics and Electricals).

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

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

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

Answer

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

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

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

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

Registered Office of Company [Section 12 and 13]

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). 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

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. 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.

However, under section 12 (5) of the Act which deals with the registered office of company, the **change in registered office** from one **town or city** to another **in the same state**, must be approved by a **special resolution** of the company.

Further, presuming that the **Registrar** will remain the **same** for the whole state of Maharashtra, there will be **no need** for the company to seek the **confirmation** to such change from the **Regional Director**.

Question 4

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

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. 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.

However, under section 12(5) which deals with registered office of company, the **change in registered office** from one town or city to another in the same state, must be **approved by a special resolution** of the company.

Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of **Regional director**.

Question 5

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

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from· Pune to Mumbai under the authority of a Board resolution.

(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Answer

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

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

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

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

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

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

Commencement of Business [Section 10A]

Question 6

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013.

Answer

As per Section 10A of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(i) A **declaration** is filed by a director within a period of **180 days** of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the **Registrar** that every **subscriber to the memorandum** has **paid the value** of the shares agreed to be taken by him on the date of making of such declaration; and

(ii) The company has filed with the Registrar a **verification of it registered office** as provided in sub-section (2) of section 12.

Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company.

Authentication of Documents, Proceedings & Contracts and Execution of Bills of Exchange [Section 21 and 22]

Question 7

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

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.

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.

Service of Documents [Section 20]

Question 8

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 9

Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general 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. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide:

(i) Whether the contention of Vijay is valid.

(ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

Answer

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.

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

(i) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.

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

Question 10

The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(i) Whether refusal of document by the company is valid?

(ii) Whether Suresh can claim damages for it?

Answer

Serving of document to Company

In terms of Section 20(1) 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
- speed post, or
- **courier service**, or
- leaving it at its registered office, or
- means of such electronic or other mode as may be prescribed.

In the instant case, Suresh dispatches some document to AB Ltd. by courier whereas the AOA of said company provides that documents may be served upon the company only through Speed Post. AB Ltd. did not accept the documents on the ground that it is in violation of the AOA.

Taking into account the above provision,

(i) **Refusal** of documents by AB Ltd. is **not valid** as sending of documents by courier to AB Ltd. is **complying** with the provisions given under section 20(1) of the Act.

(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, **YES**, he can claim the damages for any loss occurred to him.

Types of Companies

Question 11

Flora Fauna Limited was registered as a public company. There are 230 members in 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 Flora Fauna 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

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, 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-

(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,

shall **not** be **included** in the number of members.

Accordingly, total Number of members in Flora Fauna Limited are:

(i)	Directors and their relatives	50
(ii)	5 Couples (5x1)	5
(iii)	Others	145
	Total	**200**

(i) Flora Fauna 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 200 which is within the prescribed maximum limit of 200, so Flora Fauna Limited **can be converted into a private company**.

(ii) There is **no need for reduction in the number of members** for the proposed private company as existing number of members are 200 which does not exceed maximum limit of 200.

Question 12

Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

(i) ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

(ii) CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

(iii) PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013.

Answer

According to Section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities **listed on any recognised stock exchange**.

RULE 2A: According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:

(a) **Public companies** which have **not listed their equity** shares on a recognized stock exchange but have listed their-

(i) **non-convertible debt** securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) **non-convertible redeemable preference** shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) **Public companies** which have not listed their equity shares on a recognized stock exchange but whose equity shares are **listed on a stock exchange in a jurisdiction as specified** in sub-section (3) of section 23 of the Act.

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.

(ii) CHG Limited is an unlisted company.

(iii) PRS Limited is an unlisted company.

Question 13

Following are some of the securities, issued by different companies related with each other, as follows:

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s):

(a) Whether the aforesaid companies can be considered as listed company(ies)?

(b) Explain the relationship between the aforesaid companies?

Answer

(a) According to section 2(52) of the Companies Act, 2013, listed company means a company which has any of its **securities listed on any recognised stock exchange**;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:

(a) **Public companies** which have not listed their equity shares on a recognized stock exchange but have **listed** their–

(i) **non-convertible debt** securities issued on **private placement** basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) **non-convertible redeemable preference** shares issued on **private placement** basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) **Private companies** which have **listed their non-convertible debt** securities on **private placement** basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are **listed on a stock exchange in a jurisdiction as specified** in sub-section (3) of section 23 of the Act.

Company Name	Analysis and Conclusion
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non- convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. **shall not be considered as a listed company.**
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non- convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. **shall not be considered as a listed company.**
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. **shall not be considered as a listed company.**

(b) According to section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

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-

(i) controls the **composition of the Board** of Directors; or

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

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation-For the purposes of this clause,-

(a) a company shall be **deemed to be a subsidiary** company of the holding company even if the **control** referred to in sub-clause (i) or sub-clause (ii) **is of another subsidiary company** of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can **appoint or remove** all or a **majority** of the directors;

(c) the expression "company" includes anybody corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries; As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.

It is given that Kleshrahit Ltd. has the power to appoint 2/3rd directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd.

Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that **Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd.** while the latter is the holding company of Indriyadaman Ltd.

(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd.

Accordingly, as per sub-clause (ii) to section 2(87), it can be understood that **Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd.** while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively.

Accordingly, as per sub-clause (ii) to section 2(87) read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that **Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd.** while latter would be considered as the holding company of Sajagta (P) Ltd.

(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a **fiduciary capacity**.

As per the notification dated 27th December 2013, Ministry (MCA) clarified that the shares held by a company or power exercisable by it in another company in a **fiduciary capacity** shall **not be counted** for the purpose of determining the holding–subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Accordingly, **Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding–subsidiary relationship** as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

Question 14

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

(i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?

(ii) XYZ Private Limited is a public company as per the Companies Act, 2013?

Answer

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

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

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

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

(1) **controls the composition** of the **Board of Directors**; or

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

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

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

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

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

Question 15

The paid-up share capital of Altar Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?

Answer

In terms of 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-

(i) controls the **composition of the Board** of Directors; or

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

Explanation- For the purposes of this clause-

(a) a company shall be **deemed to be a subsidiary** company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of **another subsidiary** company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can **appoint or remove all or a majority of the directors**.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, **PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd.**

However, if PQR Pvt. Ltd. has **8 out of 9 Directors** on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; **it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.**

Question 16

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

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

(i) paid-up share capital of which does not exceed **four crore** rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed **forty crore** rupees:

Nothing in this clause shall apply to-

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

(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 17

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was ₹ 1.80 crore; and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

or

Shubham Limited is the holding company of Vaibhav Pvt. Limited. As per the financial statements of Vaibhav Pvt. Limited for the financial year ending 31st March 2025, its turnover was ₹ 1.80 crore and its paid-up share capital was ₹ 80 lakh. The Board of Directors of Vaibhav Pvt. Limited intends to avail the status of a small company under the Companies Act, 2013.

However, Company Secretary advised Board that Vaibhav Pvt. Limited cannot be classified as a small company.

In light of the above facts, examine the correctness of the advice given by the Company Secretary with reference to the relevant provisions of the Companies Act, 2013.

or

AJD Pvt. Ltd. is having paid up share capital of ₹ 45 Lakhs and annual turnover of ₹185 Lacs. It is a wholly owned subsidiary of K Ltd.-a listed company. Can AJD Pvt. Ltd. be called a small company as per the provisions of the Companies Act, 2013.

Answer

As per section 2(85) of the Companies Act, 2013, Small company means a company, **other than a public company**-

(i) paid-up share capital of which does not exceed **four crore** rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed **forty crore** rupees:

Provided that nothing in this clause shall apply to-

(A) a **holding** company or a **subsidiary** company;

(B) a company registered under **section 8**; or

(C) a company or body corporate governed by any **special Act**.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be **categorized as a 'small company' because it is the subsidiary of another company** (H Ltd.).

Hence, the contention of the **Company Secretary is correct**.

Formation of Companies with Charitable Objects, etc. [Section 8]

Question 18

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 19

Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31.03.2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.

Answer

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.

Hence, in the instant case, proposed act of Bio safe Herbals, a company licenced under Section 8, which is planning to declare dividend, is **not in accordance** to the provisions of the Companies Act, 2013.

Question 20

Sai along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters:

(i) What is the minimum paid-up capital requirement in case of a Section 8 Company?

(ii) Whether a firm can be member of the Section 8 Company?

(iii) Whether the Section 8 Company can pay dividend to its members?

Advise, Sai with reference to the provisions of Companies Act, 2013.

Answer

(i) The **requirement** of having a minimum paid up share capital shall **not apply** to a section 8 company vide notification dated 5th June 2015.

(ii) Yes, under section 8(3) of the Companies Act, 2013, a **firm may be a member** of the company registered under section 8.

(iii) According to Section 8(1)(c) of the Companies Act, 2013, section 8 company cannot pay dividend to its members as it **prohibits** the payment of **dividends** to its members.

Question 21

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31.03.2024. 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

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.

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 22

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company?

Answer

According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the **previous approval of the Central Government** (the power has been **delegated to Registrar** of Companies).

Also, a **firm may be a member** of the company registered under section.

Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the **contention of Dhwaj & Co. was valid**.

Also, section 8 allows a firm to be a member of such company and hence, **Dhwaj & Co. can be its member**.

Question 23

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

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

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

(b) intends to apply its **profits**, if any, **or other income in promoting its objects**; and

(c) intends to **prohibit** the payment of any **dividend** to its members;

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

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

In the instant case, decision of 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 distribute the surplus of assets over the liabilities, if any, amongst the members will **not hold good**, since there is a **restriction** as pointed out in point (b) above regarding application of its **profits or other income only in promoting its objects**.

Further, there is **restriction** in the **application of the surplus assets** of such a company in the event of **winding up or dissolution** of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the **proposal is not feasible**.

Question 24

State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

(i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.

(ii) Whether the Company may be wound up?

(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?

Answer

(i) According to Section 8(6) of the Companies Act, 2013, the **Central Government** may by order **revoke** the licence of the company where the company **contravenes** any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted **fraudulently**, or in **violation** of the objects of the company or prejudicial to **public interest**, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a **written notice** of its intention to revoke the licence and **opportunity to be heard** in the matter.

Hence, in the instant case, the **Central Government can revoke the license** given to State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

(ii) Where a licence is revoked, the **Central Government** may, by order, if it is satisfied that it is essential in the **public interest**, direct that the company be **wound up** under this Act **or amalgamated** with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable **opportunity of being heard**. [Section 8(7)] Hence, the stated company **may be wound up**.

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

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

Question 25

Alfa school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2024, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

Answer

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

(i) The Central Government may by order **revoke the licence** of the company where the company **contravenes** any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted **fraudulently**, or violative of the objects of the company or **prejudicial to public interest**, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a **written notice** of its intention to revoke the licence and **opportunity to be heard** in the matter.

(ii) Where a licence is **revoked**, the Central Government may, by order, if it is satisfied that it is **essential in the public interest**, direct that the company be **wound up** under this Act **or amalgamated** with another company registered under this section. However, no such order shall be made unless the company is given a **reasonable opportunity of being heard**.

(iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be **amalgamated** with another company registered under this section and having **similar objects**, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be **specified in the order**.

Question 26

Mr. X, in association with his relative formed a company to promote education for the children of poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of funds were contributed by public for the fulfilment of the benevolent object. However, on the compliant against the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child.

Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013.

Answer

As per the Section 8 of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company **contravenes** any of the requirements or the conditions of 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**.

Where a licence is revoked, the **Central Government** may, by order, if it is satisfied that it is essential in the **public interest**, direct that the company be **wound up** under this Act **or amalgamated** with another company registered under this section.

Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be **amalgamated with another company registered under this section and having similar objects**, then, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013. However, an object for which both the Companies formed were promoting different objects. Accordingly, the **order passed by the Central Government** after the revocation of license, is **not in compliance** of the Section 8 of the Companies Act, 2013.

One Person Company (OPC) [Section 3]

Question 27

Mr. Aditya had incorporated a one-person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one-person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid?

Answer

As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a **natural person** who is an **Indian citizen whether resident in India or otherwise**-

(a) shall be eligible to **incorporate** a One Person Company (OPC);

(b) shall be a **nominee** for the sole member of a One Person Company (OPC).

By taking into account the above provisions, **ABC Private Ltd. cannot be appointed as nominee** in one-person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is **not valid**.

Question 28

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.

(i) If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(ii) 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

(i) 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 and be appointed as nominee of a One Person Company.

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.

(ii) The **memorandum** of One Person Company 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 29

Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013?

Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

(i) Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.

(ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.

(iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

Answer

As per section 3 of the Companies Act, 2013, the **memorandum** of One Person Company (OPC) shall **indicate** the **name of the other person (nominee)**, who shall, in the event of the subscriber's **death or his incapacity** to contract, become the member of the company.

The other person (nominee) whose name is given in the memorandum shall give his **prior written consent** in prescribed form and the same shall be filed with **Registrar** of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.

Such other person (nominee) **may withdraw his consent** in such manner as may be prescribed.

Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can **withdraw** his consent as a nominee of the OPC by giving a **notice in writing to the sole member and to the One Person Company**.

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

(i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, **no minor shall become member or nominee** of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

(ii) As per the 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 a nominee or the sole member of a One Person Company.

In the given question Ms. Devaki is an Indian citizen.

Thus, she is **eligible to be nominated as nominee** in OPC irrespective of her residential status.

(iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall **not be a member of more than one OPC** at any point of time and the said person shall **not be a nominee of more than one OPC**. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), **can be nominated as nominee**.

Members Liable in Certain Cases i.e. Reduction in Minimum Membership [Section 3A]

Question 30

What is the minimum number of persons required to form a Private company and a Public company.

Explain the consequences when the number of members falls below the minimum prescribed limit.

Answer

According to section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by-

(a) **7** or more persons, where the company to be formed is to be a **public company**;

(b) **2** or more persons, where the company to be formed is to be a **private company**; or

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to section 3A,

- If at any time the number of members of a company is **reduced**,
  - in the case of a **public company, below 7**,
  - in the case of a **private company, below 2**,

  and company **carries** on business for **more than six months** while number of members is so reduced, then
- every person who is a **member** of the company during the time that it so carries on business after those six months and is **cognizant (aware) of the fact** that it is carrying on business with less than seven members or two members, as the case may be,
- shall be **severally liable** for the payment of the whole **debts** of the company **contracted** during that time (**after six months**) and may be severally sued therefore.

Question 31

Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till 15th August. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

Answer

According to section 3A of Companies Act, 2013, If at any time number of **members** of a company is **reduced**, in case of a **public company, below 7**, in case of a **private company, below 2**, and company carries on business for **more than 6 months** while number of members is so reduced, every person who is a member of company during the time that it so carries on business after those 6 months and is **cognizant** of the fact that it is **carrying on business** with less than 7 members or 2 members, as the case may be, shall be **severally liable** for payment of the whole **debts** of company **contracted** during that time, and may be severally sued therefor.

Hence, in the given situation, the number of **members** in the said public company have **fallen below 7** [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be **severally liable** for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Memorandum of Association (MOA) and Articles of Association (AOA) [Section 4, 5, 6, 10, 13, 14, 15, 16 and 17]

Question 32

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

According to section 16 of the Companies Act, 2013 if a company is registered by a name which-

- in the opinion of the **Central Government**, is **identical** with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an **ordinary resolution** change its name within **3 months**.
- is **identical** with a registered trade mark and owner of that trade mark **apply to the Central Government within three years** of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an **ordinary resolution within 3 months**.

Company shall give **notice to ROC** along with the order of Central Government **within 15 days** of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade-mark is **filing objection after 5 years** of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the **company cannot be compelled to change its name**.

As per section 13, company can anytime change its name by passing a **special resolution** and taking approval of **Central Government**. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it **can change its name voluntarily** by following the provisions of section 13.

Question 33

UINA Infra Projects Private Limited was incorporated on 1st June, 2022. Mr. X had already registered the trade name of "UINA Infra projects" on 1st April, 2018 under the Trade Marks Act, 1999. Mr. X was suffering from a pro-longed disease since 1st April, 2021. When Mr. X recovered from illness on 20th May, 2024 and joined his own office on 5th July, 2024, he came to know from his staff members that a company has been incorporated with the name UINA Infra Projects Private Limited. He lodged a complaint with the Regional Director on 10th July, 2024 requesting him to order the company to change its name. The Regional Director examined the application of Mr. X and on 11th July, 2024, issued a direction to UINA Infra Projects Private Limited to change its name. Mr. D, a director of UINA Infra Projects Private Limited contended that the above direction of the Regional Director was bad in law and therefore not proper on the following grounds:

A. That the name of the company is not too identical with or too nearly resembles to the name of any other company; and

B. That the stipulated time period of two years of making any complaint with respect to the name in the above ground was already over on 31st May, 2024.

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

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

Answer

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

in the opinion of the **Central Government** (Power delegated to the Regional Director), is of opinion that name (original or revised/new) of company is **identical with or too nearly resembles** to the name by which a company in existence, then, either:

(i) On its **own** or

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

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

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

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

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

Part (i) - First Ground of Objection:

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

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

Part (ii) - Second Ground of Objection:

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

Question 34

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

Alteration of Objects Clause of Memorandum

The Companies Act, 2013 has made **alteration of the memorandum** simpler and more flexible. Under section 13(1) of the Act, a company may, by a **special resolution** after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, section 13(6) requires the **filing of the Special Resolution** by the company with the **Registrar**. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and **certify the registration within a period of thirty days** from the date of filing of the special resolution by the company.

Section 13 (10) further stipulates that no alteration in the Memorandum shall take **effect** unless it has been **registered** with the Registrar as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. **Vivek Industries Limited can make the required changes in the object clause** of its Memorandum of Association.

Question 35

Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised ₹ 100 crore through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crore 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

According to section 13 of the Companies Act, 2013 a company, which has **raised money from public** through prospectus and still has any **unutilised amount** out of the money so raised, shall not change its objects for which it raised the money through prospectus **unless a special resolution** is passed by the company and-

(i) the details in respect of such resolution shall also be published in the **newspapers** (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the **website of the company**, if any, indicating therein the justification for such change;

(ii) the **dissenting shareholders** shall be given an opportunity to **exit** by the **promoters and shareholders** having control in accordance with SEBI regulations.

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

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

Question 36

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

Answer

Entrenchment: Usually an article of association may be altered by passing **special resolution** but entrenchment makes it more **difficult** to change it. So entrenchment means making something more protective.

Section 5 of the Companies Act, 2013 describes the provisions relating to entrenchment.

Articles may contain provisions for entrenchment [Section 5(3)]: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if **conditions** or procedures as that are **more restrictive than** those applicable in the case of a **special resolution**, are met or complied with.

Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made **either on formation** of a company, **or by an amendment** in the articles agreed to by **all the members** of the company in the case of a **private company** and by a **special resolution** in the case of a **public company**.

Notice to the registrar of the entrenchment provision [Section 5(5)]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give **notice to the Registrar** of such provisions in such form and manner as may be prescribed.

Question 37

Yadav dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2019. 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

As per section 5 of the Companies Act, 2013 the article may contain provisions for **entrenchment** to the effect that specified provisions of the articles may be altered only if **more restrictive conditions than a special resolution**, are met.

The provisions for entrenchment shall only be made either on **formation** of a company, **or** by an **amendment** in the articles agreed to by **all the members** of the company in the case of a **private company** and by a **special resolution** in the case of a **public company**.

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

In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

Question 38

Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting Articles of Association, it has been included that Mr. Shyamlal will remain as director for lifetime.

Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non-family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director.

Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013.

Answer

As per the provisions of sub-section (3) of section 5 of the Companies Act, 2013, the articles may contain provisions for **entrenchment** to the effect that specified provisions of the articles may be **altered** only if **conditions** or procedures as that are **more restrictive than** those applicable in the case of **special resolution** are met or complied with.

Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.

Manner of inclusion of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made **either on formation** of a company, **or by an amendment in the Articles** of Association as agreed to **by all the members** of the company in the case of a **private company and** by a **special resolution** in case of a **public company**.

Notice to the Registrar of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the **company shall give notice to the Registrar** of such provisions in such form and manner as may be prescribed.

In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the **articles altered which is agreed to by all the members** whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Question 39

The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.

Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

Answer

Alteration in Articles of Association: Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

(1) Alteration by special resolution: Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a **special resolution** alter its articles.

(2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the **Registrar**, together with a printed copy of the altered articles, **within a period of fifteen days** in such manner as may be prescribed, who shall **register** the same.

(3) **Any alteration made shall be valid:** Any alteration of the articles **registered** as above shall, subject to the provisions of this Act, be **valid** as if it were originally contained in the articles.

(4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be **noted in every copy** of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

Question 40

Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

Answer

As per Section 9 and 10 of the Companies Act, 2013 following shall be the **effect of registration** of a company:

(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.

(2) Such a registered company shall be capable of exercising all the functions of an **incorporated company** with the **perpetual succession** with power to acquire, hold and dispose of property, and to contract and to **sue** and be sued.

(3) The **memorandum and articles** shall, when registered, **bind the company and the members** thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of memorandum and of articles.

(4) All monies payable by any member to the company under the memorandum or articles shall be a **debt due** from him to the company.

Subsidiary Company not to hold shares in its Holding Company [Section 19]

Question 41

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:

(1) the subsidiary company holds shares in its holding company as the **legal representative** of a deceased member of the holding company,

(2) the subsidiary company holds such shares as a **trustee**, or

(3) the subsidiary company was a **shareholder** in the holding company even **before it became its subsidiary**.

Question 42

S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide

(i) the validity of holding of shares by S Ltd. in H Ltd.

(ii) allotment of Bonus shares by H Ltd. to S Ltd.

Answer

As per Section 19 of the Companies Act, 2013, **no company** shall, hold any shares in its **holding** company and no holding company shall **allot or transfer** its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **void**.

However, this shall not apply where the subsidiary company is a **shareholder** even **before it became a subsidiary** company of the holding company.

In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore-

(i) **Holding of shares by S Ltd. in H Ltd. is valid** in view of the proviso (c) to sub-section (1) of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is shareholder even before it became a subsidiary company of holding company.

(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also **valid** in view of the above proviso.

Question 43

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 shareholder of H made a charitable trust and donated his 10% shares in H and ₹ 50 crore 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

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

Following are the **exceptions** to the above rule;

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

(b) Where the subsidiary company holds such shares as a **trustee**; or

(c) Where the subsidiary company is a **shareholder** even **before it became a subsidiary** company of the holding company, but in this case, it will **not have a right to vote** in the meeting of holding company.

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

Question 44

Kavya Ltd. has a paid up share-capital of Rs. 80 crores. Amjali Ltd. holds a total of Rs. 50 crores of Kavya Ltd. Now, Kavya ltd. is making huge profits and wants to expand its business and is aiming at investing in Amjali Ltd. Kavya Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of Amjali Ltd.

Answer

In terms of 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-

(i) **controls the composition** of the **Board of Directors**; or

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

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, Kavya ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of Kavya Ltd., **it (Amjali Ltd.) is holding of Kavya Ltd.**

Further, as per the provisions of section 19 of the 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**:

Provided that nothing in this sub-section shall apply to a case-

(a) where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a **trustee**; or

(c) where the subsidiary company is a **shareholder** even **before it became a subsidiary** company of the holding company

In the given question, **Kavya ltd. cannot acquire the shares of Amjali Ltd.** as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

Question 45

As at 31st March, 2018, the paid up share capital of S Ltd. is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others.

Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?

(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

Answer

The paid up share capital of S Ltd. is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013.

In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, **no company** shall, either by itself or through its nominees, hold any shares in its **holding** company. Therefore, **S Ltd. cannot make further investment** in equity shares of H Ltd. during 2018-19.

(ii) As per second proviso to Section 19, a subsidiary company shall have a **right to vote** at a meeting of the holding company only in respect of the shares held by it **as a legal representative or as a trustee**. Therefore, S Ltd. can exercise **voting rights** at the Annual General Meeting of H Ltd. **only in respect of 1% shares held as a legal representative** of a deceased member of H Ltd.

(iii) Section 19 also provides that 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**. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Question 46

ABC Limited issued equity shares worth ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013-

(i) Whether ABC Limited is a subsidiary of MNP Limited?

(ii) Whether ABC Limited can hold shares of MNP Limited?

(iii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023?

Answer

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

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

(i) controls the **composition of the Board** of Directors; or

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

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

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

Provided that nothing in this sub-section shall apply to a case where:

(a) where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a **trustee**

(c) the subsidiary company is a **shareholder** even **before it became a subsidiary** company of the holding company.

Provided further that the subsidiary company referred to in the preceding proviso 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**, as referred to in clause (a) or clause (b) of the said proviso.

Here, in the instant case, ABC Limited issued 10,000 equity shares on 1st April, 2023 whereby XYZ Limited & PQR Limited holds 3,500 & 2,500 shares respectively in ABC Limited. Considering 1 share = 1 vote, XYZ Limited and PQR Limited together holds 60% of the total voting power [i.e. more than one-half (50%)].

Further, MNP Limited controls the composition of Board of Directors of XYZ Limited and PQR Limited from 01.07.2023. In the light of section 2(87), **MNP Limited is a holding company of XYZ Limited and PQR Limited** (Subsidiary companies).

Following are the answers to the questions:

(i) **ABC Limited shall be deemed to be a subsidiary** company of the holding company (**MNP Limited**) as MNP Limited controls the composition of subsidiary companies XYZ Limited & PQR Limited as per explanation to section 2(87).

(ii) **Yes**. In this case ABC Limited is a subsidiary of MNP Limited as ABC Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the MNP Ltd., according to the exception to section 19.

(iii) 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 but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore:

1. **ABC Limited cannot vote** at AGM of MNP Limited held on 30th September, 2023.
2. **XYZ Limited can vote** at AGM of MNP Limited held on 30th September, 2023.

Doctrine of Constructive Notice and Doctrine of Indoor Management

Question 47

Explain the exceptions to the Doctrine of Indoor Management.

Answer

Exceptions to Doctrine of Indoor Management

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

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

Question 48

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

or

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

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

Basis for Doctrine of Indoor Management

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

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

Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available in the circumstances where company does not make proper inquiry.

Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

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

Question 49

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

Answer

Doctrine of Indoor Management: According to this doctrine, persons dealing with the company **need not enquire** 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.

Thus,

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

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the

necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the **company is bound to pay the loan** to Mr. Tridev.

Miscellaneous

Question 50

State whether these statements are true/false along with reasons

(i) To be a promoter one necessarily be associated with the initial formation of the company.

(ii) Even a Non-Resident Indian can form and become member of OPC.

(iii) Members who knowingly operating the company for more than six months with less than the minimum number of members specified in Section 3(1) are severally liable for the payment of all debts contracted by the company during the period since the number of members was first reduced.

Answer

(i) False, one who **subsequently helps** company to keep going, raise fund & advice to board (**other than** in **professional** capacity) will equally be regarded as a promoter.

(ii) True. [As per Rule 3(1) of the Companies (Incorporation) Rules, 2014.]

Only a **natural person**, other than minor; who is an Indian citizen and **whether resident in India or otherwise** shall be eligible to incorporate a One Person Company.

(iii) False, refer section 3A of the Act. Such members are **liable severally** for the payment of the whole debts of the company contracted during that time (**after elapse of six months**).

Question 51

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

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;

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.

CHAPTER - 3
Prospectus and Allotment of Securities

Prospectus [Section 25 to 28 and 30 to 33]

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 Company. State reports which shall be included in prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer

As per section 26(1) of the Companies Act, 2013, every **prospectus** issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be **dated and signed** and 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.

It is provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the **regulations** made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall **apply**.

According to clause (c) of Section 26 (1), the prospectus shall make a **declaration** about the **compliance** of the provisions of the Companies Act, 2013 and a **statement** to the effect that **nothing** in the prospectus is **contrary** to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

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

In case of Super-Fix-it Limited, some members of 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 to carry transaction.

Company incur the expense of ₹ 3.2 lakh for carrying out such transactions, can company recover the amount so incurred in full from such members?

Answer

Yes, members who offer whole or part of their holding of shares to the **public**, in consultation with board of directors, shall **authorise 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.

Question 3

Examine the validity of allotment in the light of the provisions of the Companies Act, 2013

The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the concerned Registrar of Companies. Explain the remedy available to the investors in this regard.

Answer

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the **public only by issuing a prospectus**. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the **Registrar** before its issue.

In the given case, the **company has violated** with the above provisions of the Act and hence the **allotment made is void**. The company will have to **refund** the entire moneys received and will also be **punishable** under section 26 of the Act.

Question 4

Comment on the following:

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

(ii) Conditions in regard to Experts' Statement.

(iii) Date of publication of prospectus.

Answer

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

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

a. That a copy has been **delivered for filing to the Registrar**

b. Documents required by this section to be **attached** to the copy so delivered or refer to statements included in the prospectus which specify these documents.

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

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

a. If he is engaged or interested in the formation or promotion or management of the company, or

b. If the expert has **not given written consent** to the issue of the prospectus, or

c. If he has **withdrawn** the consent before the delivery of a copy of the prospectus to the Registrar for filing.

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

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

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

Question 5

The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued

are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Answer

As a financial consultant the Board of Directors of ABC Limited would be advised to issue a **Red Herring Prospectus**. The expression "red herring prospectus" means a prospectus which does **not include** complete particulars of the **quantum or price** of the securities included therein. [Explanation to Section 32]

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are **left open** to be decided **post closure** of the issue.

The company may follow the provisions of section 32 in issuing a red herring prospectus:

(1) **Red Herring Prospectus is issued prior to issue of Prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus **prior to the issue of a prospectus**.

(2) **Filing with the registrar:** A company proposing to issue a red herring prospectus shall file it with the **Registrar at least three days prior** to the opening of the subscription list and the offer.

(3) **Obligations under Red Herring Prospectus vis-à-vis Prospectus:** A red herring prospectus shall carry the **same obligations** as are applicable to a prospectus and any **variation** between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) **Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer:** Upon **closing** of offer of securities under this section, prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the **Registrar and the Securities and Exchange Board**.

Question 6

An applicant who made application for allotment along with advance payment of subscription, if he expresses a desire to withdraw his application after changes reported in information memorandum came to his knowledge. What is the responsibility of company?

Answer

Company shall refund all monies received as subscription within **15 days**. It is provided that where a company or any other person has received applications for the allotment of securities along with **advance payments** of subscription before the making of any such change, the company or other person shall **intimate changes** to such applicants and if they express a desire to **withdraw** their application, company or other person shall **refund all the monies** received as subscription **within 15 days** thereof.

Question 7

ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

Answer

Information Memorandum together with Shelf Prospectus is deemed Prospectus. The expression "shelf

prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in **one or more issues over a certain period** without the issue of a further prospectus.

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

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

(ii) in respect of a **second or subsequent offer** of such securities issued during the period of validity of that prospectus, **no further prospectus** is required for issue of securities. [Sub-section (1)]

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

Question 8

Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?

Answer

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in **one or more issues over certain period** without issue of a further prospectus

(1) According to Section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with Registrar at the stage-

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

  (B) in respect of a **second or subsequent offer** of such securities issued during the period of validity of that prospectus, **no further prospectus** is required.

(2) Other formalities related to such repeated/subsequent issue of shares- Company filing a shelf prospectus shall be required to file an **information memorandum** containing all material facts relating to new **charges** created, changes in **financial position** of company as have occurred between first or previous offer of securities and succeeding offer of securities and such other changes as may be prescribed, with **Registrar** within prescribed time, prior to issue of a second or subsequent offer under shelf prospectus.

Thus, **Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus**.

Question 9

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of the Companies Act, 2013 and the Companies (Prospectus and Allotment of securities) Rules, 2014

Answer

As per **explanation to section 31**, the expression "shelf prospectus" means a prospectus in respect of which

the securities or class of securities included therein are issued for subscription in **one or more issues over a certain period** without the issue of a further prospectus.

A company is required to issue a prospectus each time it accesses the capital market. It leads to unnecessary repetition for a company which makes more than one offer of securities in a year to mobile funds from the public. A way out is shelf prospectus which remains valid (on the shelf) a specified time period during which offers for securities may be made by a company to the public without going through the arduous exercise of issuing fresh prospectus every time.

1. Filing of shelf prospectus with the Registrar

Shelf prospectus may be filled with the Registrar at the stage of first offer of securities, by class or classes of companies as the Securities and Exchange Board may provide by regulations in this behalf.

It has to indicate a period not exceeding **one year** as the period of **validity** of such shelf prospectus.

Period of validity is to **commence** from date of opening of first offer of securities under such prospectus.

In respect of any second or subsequent offer of such securities issued during the period of validity of such prospectus, **no further prospectus** is required.

2. Filing of 'Information Memorandum' with the Shelf Prospectus

A company filing a shelf prospectus shall be required to file an **information memorandum** with the **Registrar** within the prescribed time, **prior to the issue** of a second or subsequent offer of securities under the shelf prospectus containing;

a. All material facts relating to new **charges** created,

b. Changes in the **financial position** of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities, and

c. Such other changes as may be **prescribed**,

The information memorandum shall be prepared in **Form PAS-2** and filed with the **Registrar** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within **one month prior** to the issue of a second or subsequent offer of securities under the shelf prospectus.

3. Safeguard (in case of changes) to applicants who made payment in advance.

It is provided that where a company or any other person has received applications for the allotment of securities along with **advance payments** of subscription before the making of any such change, the company or other person shall **intimate** the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall **refund all the monies** received as subscription **within fifteen days** thereof.

4. Information Memorandum together with Shelf Prospectus is deemed Prospectus

Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be **deemed to be a prospectus**.

Question 10

What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus?

Answer

(1) Meaning of Abridged Prospectus: According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such **salient features** of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(2) Circumstances under which the abridged prospectus need not accompany the application forms: Section 33 (1) of the Companies Act, 2013 states that no **application form** for the purchase of any of the securities of a company can be issued unless such form is accompanied by an **abridged prospectus**. In terms of the Proviso to section 33 (1) an abridged prospectus **need not accompany** the application form if it is shown that the form of application was issued:

(i) In connection with a bona fide invitation to a person to enter into an **underwriting** agreement with respect to such securities; or

(ii) Where the securities are **not offered to the public**.

(iii) Where offer is made only to **existing members** of the company

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Question 11

Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

Answer

According to Section 30, where an **advertisement** of any prospectus of a company is published in any manner, it shall be necessary to specify therein the **contents of its memorandum** as regards the following:

(i) the objects,

(ii) the liability of members and the amount of share capital of the company,

(iii) the names of the signatories to the memorandum,

(iv) the number of shares subscribed for by the signatories, and

(v) the capital structure of the company.

Question 12

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 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 13

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

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

(i) that the resolution passed in the extra-ordinary general meeting was not proper since the required majority did not approve the same;

(ii) that the prescribed details of the notice which was given to the shareholders should also have been published in newspapers (one in English and one in vernacular language), circulating in the city where the registered office of the company is situated indicating clearly the justification for such variation in the use of the funds; and

(iii) that the resolution passed for investing 5,00,000 in the Equity Shares in X Limited is illegal.

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

Answer

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

The first proviso to sub-section (1) requires that prescribed details of the **notice** which has been given to the shareholders are to be published in **newspapers** (one in English and one in vernacular language) circulating

in the city where the registered office of the company is situated indicating clearly the **justification** for such variation.

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

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

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

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

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

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

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

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

(ii) In terms of the first proviso to sub-section (1) of section 27 stated above, the **second contention of the shareholders is also tenable** since the required publication was not made in the newspapers as mentioned in the above referred proviso.

(iii) In terms of the second proviso to sub-section (1) of section 27 stated above, the **third contention of the shareholders is also tenable** since Act prohibits company to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

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

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

Mis-Statements in Prospectus [Section 34 to 37]

Question 14

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

According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every **person who authorises the issue** of such prospectus shall be liable under **section 447**.

Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with **intent to defraud** the applicants for the securities of a company or any other person or for any **fraudulent** purpose, every person referred to in sub-section (1) of section 35, shall be **personally** responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

In the given question, 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**.

Question 15

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) of the Companies Act, 2013 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**.

Question 16

M applies for equity shares of a company on the basis of a prospectus which contains mis–statement. The shares are allotted to him, who afterwards transfers them to N. Whether N can bring an action for a rescission on the ground of mis-statement under section 37 of the Companies Act, 2013?

Answer

No. N cannot bring an action for rescission of contract for buying shares from M on ground of mis-statement made in the prospectus. Section 37 of the Companies Act, 2013 does not become applicable in such a situation.

It is noteworthy that according to Section 37, a suit may be filed or any other action may be taken under section 34 or section 35 or section 36 only by any person, group of persons or any association of persons **affected** by any misleading statement or the inclusion or omission of any matter in the **prospectus**. Therefore, **only M is eligible to file a suit**.

Question 17

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

raised will be utilized towards that community service.

Mr. C was impressed by these statements and subscribed to the shares of the company. He was allotted 1000 shares of the company. He subsequently sold 250 shares to Mr. D. On 15th December, 2024, he came to know that Mr. T was not a director and the company never had any intention of doing community service.

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

Answer

As per Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every **person who authorizes the issue** of such prospectus shall be liable under **section 447** of the Companies Act, 2013.

Right of Recission

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

Exceptions - When right of rescission is not available?

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

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

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

Question 18

Mr. Raju one of prospective investor under section 37 of this Act, sue the persons who authorise the issue of prospectus for the fraudulent misstatements they made in the prospectus. Mr. Raju also filed a complaint under section 420 of the IPC, 1860 and section 447 of this Act.

Mr. Angad one of the authorised persons, plead that Mr. Raju did not took any share, hence he has not borne any sort of loss, therefore he cannot seek the remedies, for what he is asking for and they are not punishable under section 447, because fraud is not committed against Mr. Raju. Whether the persons who authorised the issue of prospectus punishable under section 447?

Answer

In this case, the persons who authorised the issue of prospectus shall be punishable under section 447 for the **fraudulent misstatement**, despite the fact that Mr. Raju had not borne any loss. Because wrongful gain or loss is not essential constituent of fraud under section 447.

Question 19

With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified.

Answer

Under section 2 (70) of the Companies Act, 2013, "prospectus" means any document **described or issued** as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document **inviting offers from the public** for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which **cannot be said to have bought shares on the basis of prospectus**. **X cannot bring action for deceit against the directors**. It was also held in the case of Peek Vs. Gurney that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

Also, **X do not get right to damages against company** since he has not acted upon fraudulent misrepresentation of material fact in the prospectus.

Hence, **X will not succeed**.

Question 20

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 statements were prepared by the promoters and he simply relied on them. Is director liable under these circumstances? Decide referring to provisions of the Companies Act, 2013.

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.

The only situations when a director will not incur any liability for mis-statements in a prospectus are as under:

(1) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was **immaterial** or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was **true or** the inclusion or omission was **necessary.**

(2) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:

   (i) having consented to become a director of the company, he **withdrew** his consent before the issue of the prospectus, and that it was **issued without his authority or consent**; or

(ii) 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.

Therefore, in the present case the **director cannot escape the liability** by stating that he had relied on the promoters for making correct statements in the prospectus. He will be **liable for mis-statements in the prospectus**.

Question 21

MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generies with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology department. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Answer

Remedy against the company: Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included 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.

In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, section 35 also mentions punishment prescribed by **section 36 i.e., punishment for fraud under section 447**.

Circumstances when an expert is not liable: An expert will not be liable for any misstatement in a prospectus under the following situations:

(i) Under section 26 (5): It states that having given his consent, the expert **withdrew** it in writing before delivery of the copy of prospectus for filing, or

(ii) Under section 35 (2) (b): It states that the prospectus was issued **without his knowledge/consent** and that on becoming aware of it, he forthwith gave a reasonable **public notice** that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement **not made by him in the capacity of an expert** and included in the prospectus as such;

(iv) Under section 35 (2) (c): As regards every misleading statement purported to be made by an **expert**/contained in a **copy of/an extract** from a **report/valuation of an expert**, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to **believe** and did up to the time of the issue of the prospectus believe, that the person making the statement was **competent to make it** and that the said person had given the **consent** required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Payment of Commission [Section 40(6)]

Question 22

TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

Answer

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay **commission** to any person in connection with the **subscription** to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission:

1. the payment of such commission shall be authorized in the company's **articles of association**;
2. the commission may be paid out of **proceeds of the issue or the profit** of the company or both;
3. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of **shares**, **five percent** of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of **debentures**, shall not exceed **two and a half per cent** of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall **disclose** the following particulars-
   a. the name of the underwriters;
   b. the rate and amount of the commission payable to the underwriter; and
   c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. No commission to be paid: There shall **not** be paid commission to any **underwriter** on securities which are **not offered to the public** for subscription;
6. Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the **Registrar** at the time of delivery of the prospectus for registration.

Question 23

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

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 a number of conditions which are prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:

(a) The payment of such commission shall be authorized in the company's **articles** of association;

(b) The commission may be paid out of **proceeds of the issue or the profit** of the company or both;

(c) 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, and in case of **debentures**, shall not exceed two and a half per cent (**2.5 %**) of the price at which the debentures are issued, or as specified in the company's **articles**, whichever is **less**;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the **decision of Unique Builders Limited to pay underwriting commission exceeding 2% as prescribed in the Articles, is invalid**.

The company may pay underwriting commission in the form of flats since there is **no prohibition** on payment of underwriting commission in kind. Further, in case of Booth v New Africander Gold Mining Co., it was held that underwriting commission may be paid in **cash or in kind** or in lump sum or by way of a percentage.

Question 24

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

The Articles of Association of X Limited contained 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

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**.

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** and company can only pay a maximum of 4% underwriting commission on shares.

Question 25

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, five percent (**5%**) of the price at which the shares are issued **or** a rate authorised by the **articles**, whichever is **less**.

The same rule allows commission to be paid out of **proceeds of the issue or the profit** of company or both.

Therefore, the **decision of the Board of Directors to pay 5% commission to underwriters is invalid** since the same cannot exceed the rate which is permitted by the Articles. 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 Articles.

Allotment of Securities by Company [Section 38, 39 and 40(3)]

Question 26

After having received 80% of the minimum subscription as stated in the prospectus, Raksha Detective Instruments Limited, before finalisation of the allotment, withdrew 50% of the said amount from the bank for the purchase of certain assets. Thereafter, it started allotting the shares to the subscribers. Rashmi, one of the subscribers, was allotted 1000 equity shares. She, however, refused to accept the allotment on the ground that such allotment was violative of the provisions of the Companies Act, 2013.

Answer

According to the above example, Raksha Detective Instruments Limited has received only 80% of the minimum subscription as stated in the prospectus. Since minimum amount has not been **received** in full, the allotment is in **contravention** of section 39 (1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities **until** it has **received** the amount of **minimum subscription stated** in the prospectus. Further, under section 39 (3), such company is required to **refund the application money** received (i.e. 80% of the minimum subscription) to the applicants.

Therefore, in the present case, **Rashmi is within her rights to refuse the allotment of shares which has been illegally made** by the company.

Question 27

How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:

(i) Minimum Amount stated in the Prospectus; and

(ii) Application Money payable on shares.

Answer

The Companies Act, 2013 by virtue of the provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum amount stated in the prospectus and the application money payable in a public issue of shares as under:

Minimum amount stated in a prospectus

No Allotment shall be made of any securities of a company offered to the public for subscription; unless;-

(i) the amount **stated** in the **prospectus** as the minimum amount has been **subscribed**; and

(ii) the sums payable on application for such amount has been paid to and **received** by the company.

Application money

Section 39 (2) provides that amount payable on application on each security shall not be less than **5% of the nominal amount** of such security or such amount as SEBI may prescribe by making regulations in this behalf.

Further section 39 (3) provides that if the stated minimum amount is **not received** by the company within **30 days** of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to **refund** the application money received within such time and manner as may be prescribed.

Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of **fifteen days** from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of **fifteen percent per annum**.

In case of any default, the **company and its officer who is in default** shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

Question 28

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

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

Answer

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

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

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

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

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

In the given instance, there is compliance to section 23, as nothing is talked about matters required to be

included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

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

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

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

Question 29

Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.

Answer

Irregular allotment: The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfillment of those requirements.

In broad terms, an allotment of shares is deemed to be irregular when it has been made by a company in **violation** of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does **not issue a prospectus** in a public offer as required by section 23; or
2. Where the prospectus issued by the company does not include any of the **matters required** to be included therein under section 26 (1), **or** the information given is **misleading**, faulty and incorrect; or
3. Where the prospectus has not been filed with the **Registrar** for filing under section 26 (4); or
4. The **minimum subscription** as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than **5%** of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the **recognized stock exchanges** under section 40 of the Companies Act, 2013.

Question 30

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

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

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

Answer

As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the **company and its officer who is in default** shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

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

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

(i) whole-time director (WTD);

(ii) key managerial personnel (KMP);

(iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,

(vi) every director, in respect of a contravention of any of the provisions of this Act,

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

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

Public Offer of Securities to be in Dematerialised Form [Section 29]

Question 31

Grab Ltd., an unlisted company, intends to make a public offer of securities. However, they are not sure about the compliance requirements for issuing securities in dematerialised form. You being an expert, guide Grab Ltd, on the relevant provisions of the Companies Act, 2013 and whether Grab Ltd. is eligible to issue its securities?

Answer

The given issue is based on section 29 of the Companies Act, 2013 read with the relevant 9A (Issue of securities in dematerialised form by unlisted public companies) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Section 29 deals with the Public Offer of Securities to be in dematerialized form. It provides that every company making a **public offer** and such other class or classes of companies as may be prescribed, have to **issue their**

securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and regulations made under it.

Sub-section 1A provides that in case of **prescribed** class/classes of **unlisted** companies, the securities shall be **held or transferred** only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and regulations made under it.

Accordingly, in the given case, Grab Ltd., an unlisted company, if it falls in the prescribed classes of companies, have to comply with the provisions given under section 29(1A) and the relevant Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014. Grab Ltd. must ensure that its securities are issued and transferred in **dematerialised form** in compliance with the Depositories Act, 1996.

Issue of Securities in Foreign Jurisdictions [Section 23 and 41]

Question 32

Explain the manner in which a company may issue Global Depository Receipts in a foreign country.

Answer

The Companies (Issue of Global Depository Receipts) Rules, 2014, lays the manner in which a company may issue depository receipts in a foreign country.

Manner for issue of depository receipts–

(1) The depository receipts can be **issued** by way of **public offering or private placement or in any other manner** prevalent abroad and may be listed or traded in an overseas listing or trading platform.

(2) The depository receipts may be issued against issue of **new shares** or may be **sponsored** against **shares held** by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.

(3) The underlying shares shall be allotted in the name of the overseas as depository bank and against such shares, the **depository receipts** shall be issued **by the overseas depository bank** abroad.

Private Placement [Section 42]

Question 33

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 brother Sohit.

Question 34

Swati Limited is intending to issue its securities on private placement basis. Explain to the directors of the company, the provisions of the Companies Act, 2013, on the following matters:

(i) Meaning of Private Placement

(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment.'

Answer

(i) Meaning of 'Private Placement': As per Explanation I to section 42(3), the term "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 section 42.

(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment': A company making an offer or invitation under section 42 shall **allot** its securities within **sixty 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 **fifteen days** from the expiry of sixty days and if the company **fails** to repay the application money within the aforesaid period, it shall be liable to **repay** that money with interest at the rate of **twelve per cent** per annum from the expiry of the sixtieth day.

Question 35

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

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

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

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

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

Answer

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.

A private placement shall be made only to select group of not more than **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 Companies (Prospectus and Allotment of Securities) Rules 2014].

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

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

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

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

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

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

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

Question 36

The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ ₹ 100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31st July, 2022. Instead, during this interim period, the company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company.

Answer

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under private placement 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 60th day.

It is provided that the monies received on application under this section shall be kept in a **separate bank account in a scheduled bank** and shall not be utilised for any purpose other than:

(1) for adjustment against **allotment** of securities; or

(2) for the **repayment** of monies where the company is unable to allot securities.

In the instant case, application money from the members was received on 15th April, 2022 and company did

not make an allotment of shares till 31st July, 2022 i.e. after expiry of the period of 60 days. Hence, the **company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day**.

Therefore, the **objection raised by the members** for non-allotment of shares/non-refund of share application money within the statutory time limit **is valid**. However, their **claim to pay interest @ 15% is not valid**.

Also, the **application money cannot be used for the payment of dividends by the company**.

Question 37

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

(i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?

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

(iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement?

Answer

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

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

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

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

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.

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].

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

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

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

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

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

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

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

Question 38

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

The banks and financial institutions are also reluctant to increase their exposure in the company.

Referring to provisions of Companies Act, 2013, advise the SCPL, whether it 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

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

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

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

Meaning of Private Placement

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

Offer to be made only to a select group of persons

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

Limit on Fresh Offer

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

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

Time Limit for Allotment of Securities

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under this section shall **allot** its securities **within 60 days** from the date of receipt of the application money for such securities and if the company is **not able to allot** the securities within that period, it shall **repay** the application money to the subscribers within **15 days** from the expiry of 60 days and if the company **fails to repay** the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of **12% per annum** from the expiry of the sixtieth day.

Question 39

PQR Bakers Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which 4 are qualified institutional buyers and remaining are individuals. Before completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.

Being a public company is it possible for PQR Bakers Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Answer

According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

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.

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].

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

This limit should be counted **separately for each type of security**.

It is to be noted that if a company makes an offer or invitation to **more than the prescribed number** of persons, it shall be deemed to be an **offer to the public** and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make **fresh offer** under this section if the allotment with respect to any **offer made earlier** has not been **completed or** otherwise, that offer has been **withdrawn** or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

In the given case PQR Bakers Limited, though a public company but private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the **offer is given effectively to only 51 persons which is well within the limit of 200 persons**. From this point of view, company complies the private placement provisions.

However, as per the question, company has given **another private placement offer of debentures before completing allotment** in respect of first offer and therefore, **second offer does not comply** with section 42.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete **then both the offers can will be in the compliance with Section 42 (private placement)**.

Question 40

Discuss the provisions relating to private placement of shares under the Companies Act, 2013.

Answer

"Private placement" means any offer of securities or invitation to subscribe securities to a **select group of persons** by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. All provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is lower, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Requirements of offer or invitation for subscription of securities on private placement: [Section 42]

(1) **Issue of private placement offer letter:** According to Section 42(1), a company may, make private placement through issue of a **private placement offer letter**.

(2) **Offer/invitation to number 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].

Offer/invitation made to more than the prescribed number of persons: If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to **more than the prescribed number of persons**, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an **offer to the public** and shall accordingly be governed by the provisions of Part I of Chapter III.

(3) **No issue of fresh offer/invitation: No fresh offer** or invitation under this section shall be made **unless** the allotments with respect to any offer or invitation made **earlier**-

(i) have been **completed**, or

(ii) that offer or invitation has been **withdrawn**, or

(iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies).

CHAPTER - 4
Share Capital and Debentures

Issue of Shares at a Premium or Discount [Section 52 and 53]

Question 1

State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized?

or

Walnut Foods Limited has an authorized share capital of 2,00,000 equity shares of ₹ 100 per share and an amount of ₹ 2 crore in its Securities Premium Account as on 31-3-2024. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.

Answer

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

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

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

(a) towards issue of unissued shares of company to the members of the company as fully paid **bonus shares**;

(b) in writing off the **preliminary expenses** of the company;

(c) in writing off the **expenses of**, or the commission paid or discount allowed on, any **issue** of shares or debentures of the company;

(d) in providing for the **premium payable on the redemption** of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

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 2

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Answer

As per the provisions of sub-section (1) of section 53 read with section 54 of the Companies Act, 2013, a company shall **not issue shares at a discount**, **except** in the case of an issue of **sweat equity shares**. As per the provisions of sub-section (2) of section 53 of the Companies Act, 2013, any share **issued** by a company **at a discount** shall be **void**.

In terms of the above provisions, **issue of shares by ABC Limited at a discount of ₹ 1 per share is not valid**.

In case the above shares have been issued to employees as **Sweat equity shares**, then the issue of shares at discount is **valid**. [Section 54(1) of the Companies Act, 2013.

Issue of Equity Share Capital [Section 43 and 54]

Question 3

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

Answer

Conditions for the issue of equity shares with differential rights (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014): No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:

(1) the **articles** of association of the company authorizes the issue of shares with differential rights;

(2) the issue of shares is authorized by **ordinary resolution** passed at a general meeting of the shareholders.

However, where the equity shares of a company are **listed** on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(3) the voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power at any point of time;

(4) the company has **not defaulted** in filing annual accounts and annual returns for **three financial years** immediately preceding the financial year in which it is decided to issue such shares;

(5) the company has **no subsisting default** in the payment of a declared **dividend** to its shareholders or repayment of its matured **deposits** or **redemption** of its preference shares or debentures that have become due for redemption or payment of **interest** on such deposits or debentures or payment of dividend;

(6) the company has **not defaulted** in payment of the **dividend on preference shares** or repayment of any **term loan** from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to **statutory payments** relating to its employees to any authority or default in crediting the amount in **Investor Education and Protection Fund** to the Central Government;

However, a company may issue equity shares with differential rights upon expiry of **five years** from the end of the financial Year in which such default was made good.

(7) the company has **not been penalized** by Court or Tribunal during the **last three years** of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Question 4

Trisha Data Security Limited was incorporated just a year ago with a paid- up share capital of ₹ 200 crore. Within such a small period of about year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just about a year old.

or

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid- up share capital of ₹ 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 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

Sweat equity shares of a class of shares already issued.

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

(i) the issue is authorised by a **special resolution** passed by the company;

(ii) the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

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

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall **rank pari passu** with other equity shareholders.

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make any difference that the company is just about a year old, because there is no such age (time since commencement of business) requirement under section 54.

Question 5

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 ₹ 20 crore. The company has proposed to issue sweat equity shares worth ₹ 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 ₹ 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. ₹ 3 crore, or

b. 5 crore

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

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

Question 6

Pride Pvt. Limited, a start-up by a few qualified professionals, was incorporated in 2018. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	INR (Crore)
Authorised Share Capital	
1,00,00,000 Equity Shares of ₹ 10 each	10
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of ₹ 10 each	5
Share Premium	1
General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% of its equity share capital as sweat equity shares to a class of directors and permanent employees with the objective of motivating them and making them partners in the company's growth. The proposed sweat equity shares will be subject to a lock-in period of five years.

Accordingly, the company passed a resolution in its general meeting authorizing the issuance of 15 lakh sweat equity shares at a current market price of ₹ 25 per share, to be issued for a consideration of ₹ 5 per share to the identified class of directors and employees.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, examine the following:

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

Answer

Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a **discount**, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54(1), a company may issue sweat equity shares of a class of shares **already issued**, if the following conditions are fulfilled, namely—

(a) the issue is authorised by a **special resolution** passed by the company;

(b) the **resolution** specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8(4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a **start-up company**, it may issue sweat equity shares not exceeding **fifty percent** of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8(5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of **three years from the date of allotment**.

Accordingly, in the given instance,

(i) **Size of issue of sweat equity shares was appropriate**, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit of 50% (in case of startup company). Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) **No, as per law, lock-in period will be of three years from the date of allotment**. Here, it states five years which is against the law.

Question 7

Innovative Ltd. incorporated by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	**INR (Crore)**
Authorised Share Capital	
100,00,000 Equity Shares of ₹ 10 each	10.00
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of ₹ 10 each	5.00
Share Premium	1.00
General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price ₹ 25 per share with a consideration of ₹ 5 per share to be issued to a class of directors and employees."

Company seeks your advice with reference to provision of issue of sweat equity shares under Companies Act.

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

Answer

Issue of Sweat Equity Shares

As per section 53, a company shall not issue shares at a **discount**, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares **already issued**, if the following conditions are fulfilled, namely-

(a) the issue is authorised by a **special resolution** passed by the company;

(b) the **resolution** specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a **start-up** company, as defined in notification number G.S.R. 127(E) dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, it may issue sweat equity shares not exceeding **fifty percent** of its paid up capital up to ten years from the date of its incorporation or registration. A company which is not a start-up company shall not issue sweat equity shares for more than **fifteen per cent** of the existing equity paid-up share capital in a year **or** shares of the issue value of **rupees five crore**, whichever is **higher**, provided that the issuance of sweat equity shares in the company shall not exceed **twenty-five per cent**, of the paid-up equity capital of the company at any time.

As per the aforesaid notification number G.S.R. 127(E) dated the 19th February, 2019 an entity shall be considered as a **Start-up**, if it is incorporated as a **private limited company** (as defined in the Companies Act, 2013).

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of **three years from the date of allotment**.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares i.e., 30% to be issued by a start-up entity would be appropriate. However, **Innovative Ltd. being a public company cannot assume the status of a start-up entity**. Hence, the decision of the company to issue 30% sweat equity shares to a class of directors and employees was not within the prescribed limit. Hence, the **size of issue of sweat equity shares of the company was not appropriate**.

(ii) **No**, as per law, **lock-in period will be of three years** from the date of allotment. Here, it states five years which is against the law.

Issue of Preference Shares [Section 55]

Question 8

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to ₹ 10,00,000 (10,000 preference shares of ₹ 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

According to section 55(3) of the Companies Act, 2013, 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 (such shares hereinafter referred to as unredeemed preference shares), it may-

- with the **consent** of the holders of **three-fourths in value** of such preference shares, and
- with 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, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that Tribunal shall, while giving approval under this sub-section, order the **redemption** forthwith of

preference shares held by persons who have **not consented** to issue of further redeemable preference shares.

In view of the provisions of section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹ 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. 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. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Question 9

SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?

Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Answer

According to section 55(3) of the Companies Act, 2013, 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 (such shares hereinafter referred to as unredeemed preference shares), it may-

- with the **consent** of the holders of **three-fourths in value** of such preference shares, and
- with 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, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the **redemption** forthwith of preference shares held by such persons who have **not consented** to the issue of further redeemable preference shares.

In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the **said petition is not valid and will not be approved by the NCLT**.

If the consent has been taken by three-fourths (75%) in value of such preference shares, the company **can include the dividend unpaid** in the above issue of redeemable preference shares.

Issue of Share Capital [Section 62 and 63]

Question 10

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

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 **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.

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 11

Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to shares of Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

Answer

Issue of Further Shares: According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to-

(i) the **existing equity shareholders** of the company as at the date of the offer, in **proportion to** the capital **paid up** on those shares.

(ii) **employees** under a scheme of **employees' stock option** subject to a **special resolution** passed by the company and subject to such conditions as may be prescribed.

(iii) to **any persons**, if it is authorised by a **special resolution**, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for **cash or for a consideration other than cash**, if the price of such shares is determined by the **valuation report of a registered valuer** subject to such conditions as may be prescribed.

Since, in the given case Dhyan Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, **Dhyan Dairy Ltd., if it is authorised by a special resolution, may issues shares to Shayam Ltd.** either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Question 12

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. 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 high percentage of total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provided that new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares 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 Ltd. of not offering any further shares to VRS Company Limited.

Answer

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the **existing equity shareholders** of the company as at the date of the offer, **in proportion to the paid-up capital** on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders except VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, **decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd.** on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. **is not valid**. Such a decision violates the provisions of section 62 (1) (a) as well as Articles of the issuing company.

Question 13

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

Answer

Issue of Further Shares: Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the **existing equity shareholders** of the company as at the date of the offer, in **proportion to** the capital **paid up** on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

(a) Under section 62 (1) (b) issue of further shares may be offered to **employees** under a scheme of **employees' stock option** subject to a **special resolution** passed by the company and subject to such conditions as may be prescribed.

(b) Under section 62 (1) (c) such shares may be offered to **any persons**, if it is authorised by a **special resolution**, either for **cash or for a consideration other than cash**, if the price of such shares is determined by the **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.

(c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described

above, declines such offer, the Board of Directors may **dispose** of the shares in such manner as is not **disadvantageous** to the shareholders or to the company.

Preference Shareholders: From the wordings of Section 62 (1) (c), it is quite clear that these shares **can be issued** to any persons who may be preference shareholders as well provided such issue is **authorized by a special resolution** of the company and are issued on such conditions as may be prescribed.

Question 14

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them.

The last date to accept offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of company. Examine the validity of application of Mr. Kavi under the Companies Act, 2013. Would your answer differ if Mr. Ravi is a shareholder of X Ltd.?

Answer

According to section 62 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, such shares shall be offered-

(a) to persons who, at the date of the offer, are **holders of equity shares** of the company in **proportion**, as nearly as circumstances admit, **to the paid-up** share capital on those shares by sending a letter of offer subject to the following conditions, namely:

  (i) the **offer** shall be made by notice **specifying** the number of shares offered and limiting a time not being less than **seven days** and not exceeding **thirty days** from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

  (ii) unless the **articles** of the company otherwise provide, the offer aforesaid shall be **deemed to include** a right exercisable by the person concerned to **renounce** the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

  (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may **dispose** of them in such manner which is **not dis-advantageous** to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, **Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company**.

In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it **does not affect the right of renunciation** of shares of Mr. Kavi to Mr. Ravi.

Question 15

"A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." in reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013.

Answer

Pre-requisites for issue of bonus shares

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

a. it is authorised by its **Articles**,

b. it has on the recommendation of the **Board**, been authorised in the **general meeting** of the company.

c. it has **not defaulted** in payment of **interest or principal** in respect of fixed deposits or debt securities issued by it.

d. it has not defaulted in respect of the payment of **statutory dues** of the employees, such as, contribution to provident fund, gratuity and bonus.

e. the partly paid-up shares, if any outstanding on the date of allotment, are made **fully paid-up**.

f. it complies with such conditions as prescribed by Rule 14 of the Companies (Share capital and debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall **not subsequently withdraw** the same.

Question 16

ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

		₹
(1)	Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

(i) Whether company can give bonus shares in the ratio of 1:3?

(ii) What if company decide to give bonus shares in the ratio of 1:2?

Answer

Issue of bonus shares [Section 63]: As per Section 63 of the Companies Act, 2013, a company may **issue** fully paid-up bonus shares to its members, in any manner whatsoever, **out of**-

(i) its **free reserves**;

(ii) the **securities premium** account; or

(iii) the **capital redemption reserve** account:

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

As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00 + 3.00 + 4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs. Accordingly:

(i) For issue of 1:3 bonus shares, there will be a requirement of **₹ 10 lakhs** (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, **ABC Limited can go ahead with the bonus issue in the ratio of 1:3**.

(ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of **₹ 15 lakhs** (i.e., ½ x 30.00 lakh). Here in this case, the **company cannot go ahead with the issue of bonus shares in the ratio of 1:2**, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.

Question 17

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50,00,000 equity shares of ₹ 10 each) ₹ 5,00,00,000

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of ₹ 10 each, fully paid-up) ₹ 2,00,00,000

(iii) Free Reserves ₹ 50,00,000

(iv) Securities premium account ₹ 25,00,000

(v) Capital Redemption Reserve ₹ 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue.

or

Shankar Portland Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2024 showed the following position:

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

The Board of Directors 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.

Answer

Conditions for bonus shares

According to section 63(1) of the Companies Act, 2013, a company may **issue** fully paid- up bonus shares to its members, in any manner whatsoever, **out of** -

(i) its **free reserves**;

(ii) the **securities premium** account; or

(iii) the **capital redemption reserve** account.

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

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

(i) it is authorised by its **Articles**;

(ii) it has, on the recommendation of the **Board**, been authorised in the **general meeting** of the company;

(iii) it has **not defaulted** in payment of **interest or principal** in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of **statutory dues** of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made **fully paid-up**;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall **not subsequently withdraw** the same.

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

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of ₹ 1,00,00,000 (i.e. half of ₹ 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. ₹ 1,00,00,000 (₹ 50,00,000 + ₹ 25,00,000 + ₹ 25,00,000). Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 18

Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Particulars		Amount (₹)
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹ 10 each	1,00,000	
1,00,000 equity shares of ₹ 10 each	10,00,000	11,00,000
Issued & Subscribed Capital:		
8000,12% Preference Shares of ₹ 10 each fully paid up		80,000
90,000 equity shares of ₹ 10 each, ₹ 8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		

(a)	Long-term borrowings: Secured Loan: 12% partly convertible Debenture @ ₹ 100 each		5,00,000

On 1st April, 2020 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

(A) Which of the above-mentioned sources can be used by company to issue bonus shares?

(B) Calculate the amount to be capitalized from free reserves to issue bonus shares?

(C) If the company did not ask for the final call on April 1st 2020. Can it still issue bonus shares to its members?

Answer

Issue of Bonus Shares

(1) According to section 63 (1) of the Companies Act, 2013, a company may **issue** fully paid-up bonus shares to its members, in any manner whatsoever, **out of-**

(i) its **free reserves**;

(ii) the **securities premium** account; or

(iii) the **capital redemption reserve** account.

However, **no issue** of bonus shares shall be made by capitalising reserves created by the **revaluation** of assets.

(2) Section 63 (2) provides that the company can issue bonus shares only when the partly paid-up shares, if any outstanding on the date of allotment, are made **fully paid-up**.

(A) The following sources can be used by the company to issue bonus shares:

1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

(B)

Amount of bonus shares to be issued	= 90,000 shares x 1/4 = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	= 22,500 x ₹ 10 per share = ₹ 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+25,000+2,00,000 = ₹ 3,45,000

Hence, the amount to be capitalized from free reserves to issue bonus shares will be **₹ 2,25,000**.

(C) A company can issue bonus shares on only fully paid shares. Hence, **if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members**.

Calls and Voting Rights of Shareholder [Section 47 to 51]

Question 19

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance.

However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance.

Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void?

Answer

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is **authorised by its articles** to do so.

According to section 6 of the Companies Act, 2013,

'Save as otherwise expressly provided in this Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

In simple words, the provisions of this Act shall have **overriding effect**. It is also to be noted that section 6, starts with "Save as otherwise ….". It means that if **any other section** of the Act says that article is **superior** then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the **articles of association will prevail and cannot be considered as void**.

Question 20

SAB Health Products Limited issued equity shares worth ₹ 5,00,00,000 (5,00,000 equity shares of ₹ 100 each) and it was fully subscribed and partly paid at ₹ 50 each. The company made a call to all its subscribers to pay a sum of ₹ 30 for each share held by them. Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid. Is his claim justified? Another shareholder Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him. Referring to the provisions of the Companies Act, 2013 and Rules made there under, examine whether the directors of SAB Health Products Limited permitted to do so?

Answer

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

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

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

Further, section 49 of the Act, specifies that calls shall be made on a **uniform basis** on all shares that are falling under the **same class**. A shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due.

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

Is Mr. GH's claim justified?

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

In the matter of Mr. LK

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

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

Question 21

Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

Answer

According to section 48 of the Companies Act, 2013-

(1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than **three-fourths of the issued shares** of that class or by means of a **special resolution** passed at a separate meeting of the holders of the issued shares of that class,-

(a) if provision with respect to such variation is contained in the **memorandum or articles** of the company; or

(b) in the **absence** of any such provision in the memorandum or articles, if such variation is **not prohibited by the terms** of issue of the shares of that class:

Provided that 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.

(2) No consent for variation: Where the holders of not less than **ten 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**:

Provided that an application under this section shall be made **within twenty-one days** after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Question 22

MNO limited has the following equity share capital-

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

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

The company wants to vary the voting rights of class 2 equity share capital–

1 voting right for every 5 shares to 1 voting right for every 10 shares.

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

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

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

(i) Whether a company can change the rights of its shareholders?

(ii) Whether the dissenting shareholders can apply to the Tribunal?

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 than **10 per cent** of the issued shares of a class did **not consent** to such variation or vote in favour of the special resolution for the variation, they may apply to the **Tribunal** to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is **confirmed by the Tribunal**.

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

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

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

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

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

Transfer and Transmission of Securities [Section 56 and 58]

Question 23

Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. Is there any liability of company and officer in default in the said matter?

Answer

According to section 56 (4) of the Companies Act, 2013, every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall **deliver the certificates** of all shares transferred within a period of **one month** from the date of receipt by the company of the instrument of transfer.

Further, as per section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the **company and every officer of the company who is in default** shall be liable to a penalty of **fifty thousand rupees**.

Question 24

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

The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a **private company** limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send **notice of refusal** to the **transferor and the transferee** or to the person giving intimation of such transmission, within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to section 58 (3), **transferee** may appeal to **Tribunal** against refusal within a period of **thirty days** from the date of receipt of notice or in case **no notice** has been sent by company, within a period of **sixty days** from the date on which instrument of transfer or intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, **Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered** to the company.

Forged transfer

Question 25

500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?

Answer

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be **prima facie evidence of the title** of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a **nullity**. It **does not give the transferee** (Mr. Amit) any **title** to the shares. Similarly, any transfer made by Mr. Amit (to Mr. Abhi) will also **not give a good title** to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Manoj) from the Register of Members, then the company is bound to **restore** the name of Mr. Manoj as the holder of the shares and to pay him any dividends which he ought to have received.

In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name. Also, company may be asked to **compensate** the new genuine buyer, Mr. Amit and Mr. Abhi who exercised good faith in purchasing the shares. Further, company may get itself **indemnified** by the first transferee who used the forged instrument of transfer to get the shares transferred in his name.

Alteration and Reduction of Share Capital [Section 61 and 66]

Question 26

The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

Answer

Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised by its

Articles, alter its Memorandum in its general meeting to:

(i) **increase** its authorized share capital by such amount as it thinks expedient;

(ii) **consolidate and divide** all or any of its share capital into shares of a larger amount than its existing shares;

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is **approved by the Tribunal** on an application made in the prescribed manner.

(iii) convert all or any of its paid- up shares into **stock** and reconvert that stock into fully paid shares of any denomination.

(iv) **sub-divide** its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;

(v) **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.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. **SH-7** as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the **Registrar**, along with an altered memorandum within **thirty days** of alteration.

The capital clause of memorandum, if authorised by the Articles, shall be altered by passing **ordinary resolution** as per section 61 (1) of the Companies Act, 2013.

Question 27

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹ 100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to ₹ 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

Answer

According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its **articles**, alter its memorandum in its general meeting to **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.

Section 64 of the Act states that a company shall, within **30 days** of its share capital having been altered in the manner provided in Section 61 (1), give notice to the **Registrar** in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 1,00,00,000

[thereby keeping the total amount of authorized share capital to ₹ 10,00,00,000], if authorised by the articles of association. Hence, **the request of the shareholders is considerable**.

How the company can alter its Share Capital

The capital clause of memorandum, if authorised by the Articles, shall be altered by passing **ordinary resolution** as per section 61 (1) of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Question 28

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹ 10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with provisions of the Companies Act, 2013, you are requested to

(i) Examine, validity of the decision of the Company and contention of practicing Company Secretary and

(ii) State type of resolution required to be passed to amend capital clause of Memorandum of Association.

Answer

According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to **alter its capital clause** of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its **articles**, alter its memorandum in its general meeting to **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.

(2) It provides that the cancellation of shares shall **not be deemed to be a reduction of share capital**.

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.

Accordingly, in the light of the stated facts, following shall be the answers:

(i) **Decision of the company is valid**, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, **contention of practicing Company Secretary is not valid**.

(ii) The capital clause of memorandum, if authorised by the Articles, shall be altered by passing **ordinary resolution** as per section 61 (1) of the Companies Act, 2013.

Question 29

The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:

(i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.

(ii) Conversion of 30 Lakhs partly paid up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹ 2 per share.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

Answer

(i) Procedure for reduction of share capital-

In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital.

Procedure

(1) Reduction of share capital by special resolution: Subject to confirmation by the **Tribunal** on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a **special resolution**, reduce the share capital in any manner and in particular, may-

(a) **extinguish** or reduce the liability on any of its shares in respect of the **share capital not paid-up**; or

(b) either with or without extinguishing or reducing liability on any of its shares,-

(i) **cancel any paid-up share capital** which is lost or is unrepresented by available assets; or

(ii) **pay off any paid-up share capital** which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Issue of Notice from the Tribunal: The **Tribunal** shall give notice of every application made to it to the **Central Government, Registrar and the creditors** of the company and shall take into consideration the **representations**, if any, made to it by them within a period of **three months** from the date of receipt of the notice.

(3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every **creditor** of the company has been **discharged or determined or has been secured or his consent** is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

(4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be **published** by the company in such manner as the Tribunal may direct.

(5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy

of the order of the Tribunal and of a minute approved by the Tribunal to the **Registrar within thirty days** of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(ii) Alteration of Share Capital:

SSP Limited proposes to alter its share capital. The Present authorized share capital ₹ 5 Crore will be altered to ₹ 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may **alter its capital part** of the memorandum.

A limited company having a share capital may, if so authorized by its **articles**, alter its memorandum in its general meeting to-

1. **Cancel shares** which, at the date of the passing of 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 shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
2. A company shall within **30 days** of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the **Registrar** in the prescribed form along with altered memorandum [Section 64 of the Companies Act, 2013].

The Company has to follow the above procedures to alter its authorized share capital.

Buy-back of shares or specified securities [Section 68 and 70]

Question 30

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed?

Answer

In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a **maximum of 25%** of the aggregate of its paid-up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

(a) **Free reserves** or

(b) **Security Premium** account or

(c) **Proceeds of the issue** of any shares or other specified securities

However, under the proviso to section 68 (1) **no buy back** of shares or any specified securities can be made out of the proceeds of an earlier issue of the **same kind** of shares or same kind of specified securities.

Question 31

"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

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

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

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

Question 32

XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

(i) Decide, whether the company's proposal is in order.

(ii) What will be your answer if buy back offer date is revised from January 5th, 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

Answer

(i) In the instant case, the **company's proposal is not in order** due to the following reasons:

(A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall **not exceed 25%** of its total paid up equity capital in that financial year.

(B) The **Articles** of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

(C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as **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. [proviso to section 68(2)]

(D) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities **cannot** be made out of the proceeds of an **earlier issue of the same kind** of shares or same kind of other specified securities.

(ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the **company's proposal is not in order** as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Question 33

State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

Answer

According to section 68 (6), where unlisted public company has passed a **special resolution** under section 68 (2) (b) or **Board** has passed **resolution** under item (ii) of the proviso to section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the **Registrar** a 'Declaration of Solvency' in Form **SH-9**.

The declaration shall be verified by an affidavit to the effect that the **Board** has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is **capable** of meeting its liabilities and will **not** be rendered **insolvent within a period of one year** from the date of declaration of solvency adopted by the Board. The declaration shall be signed by **at least two directors** of the company, one of whom shall be the managing director, if any.

Question 34

Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

Answer

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

(i) its **free reserves**; or

(ii) the **securities premium** account; or

(iii) the **proceeds of the issue** of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities **cannot** be made out of the proceeds of an **earlier issue of the same kind** of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

(1) The provision says that **no company** shall directly or indirectly **purchase its own shares** or other specified securities-

(a) through any **subsidiary company** including its own subsidiary companies; or

(b) through any **investment company** or group of investment companies; or

(c) if a **default** is made by company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of **three years** has lapsed after such default ceased to subsist, then such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has **not complied** with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Question 35

(i) Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

(ii) Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following

(i) Is special resolution required to be passed?

(ii) What is the time limit for completion of buy-back?

(iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

Answer

(i) **Refusal for Registration of transferred/transmitted securities:** According to Section 58 (4) of the Companies Act, 2013, if a **public company** without sufficient cause refuses to register the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer is delivered to the company, the **transferee** may, within a period of **sixty days** of such refusal or where **no intimation** has been received from the company within **ninety days** of the delivery of the instrument of transfer, appeal to the **Tribunal**.

Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either **dismiss the appeal, or by order**-

(a) direct that the **transfer or transmission** shall be **registered** by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

(b) direct **rectification of the register** and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the instant case, **Harsh, can make an appeal before the tribunal for remedies** that the company shall be ordered to register transfer/transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

(ii) Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless-

(a) The buy-back is authorized by its **articles**;

(b) A **special resolution** has been passed at a general meeting of the company authorizing the buy-back: except where-

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

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

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed **within a period of one year** from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that ratio of the **aggregate debts** (secured and unsecured) owed by the company after buy back is **not more than twice the paid up capital and its free reserves**. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. **No**, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000 x 10/100 = 5,00,000) of the company, but such buy back must be **authorized by the Board by means of a resolution** passed at its meeting.
2. Time limit for completion of buy back will be-**within a period of one year** from the date of passing of the resolution by the Board.
3. The **ratio** of the aggregate debts (secured and unsecured) owed by the company after buy back **should not be more than twice the paid up capital and its free reserves**.

The above buy-back is possible when backed by the **authorization by the articles** of the company.

Restriction on Purchasing/Giving Loans by Company to Purchase its Shares [Section 67]

Question 36

Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

Answer

Yes, the financial assistance to its **employees** by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, section 67 (3) of the Companies Act, 2013, permits a company to the give **loans to its employees** other than its directors or key managerial personnel, for an amount not exceeding their **salary** or wages for a period of **six months** with a view to enabling them to purchase or subscribe for **fully paid -up shares** in the company or its holding company to be held by them by way of beneficial ownership.

Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

Purchasing in order to redemption its preference shares, does amount to acquisition or purchase of its own

shares. But this is **allowed in terms of section 68** of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and upto specified limits and only after following the prescribed procedure.

Question 37

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

Answer

Under section 67 (2) of the Companies Act, 2013 **no public company** is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any **financial assistance** for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their **employees** other than its directors or key managerial personnel, for an amount not exceeding their **salary** or wages for a period of **six months** with a view to enabling them to purchase or subscribe for **fully paid-up shares** in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, **Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees** to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

Question 38

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

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

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

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

Answer

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

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

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

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

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

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

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

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

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

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

(B) if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our **answer will not change. This proposal of the company will also be not in order**.

(ii) As per section 67(2) of the Companies Act, 2013, **no public company** shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any **financial assistance** for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

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

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

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

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

Question 39

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹ 40,000 per month, to buy 500 partly paid-up equity shares of ₹ 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer

Restrictions on purchase by company or giving of loans by it for purchase of its share: 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:

(a) The employee must **not be a director or Key Managerial Personnel**;

(b) The amount of such loan shall not exceed an amount equal to **six months' salary** of the employee.

(c) The loan must be extended for subscribing **fully paid-up shares**.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of ₹ 40,000 per month and wants to avail loan for purchasing 500 partly paid- up equity shares of ₹ 1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, the **decision of OLAF Limited** in granting a loan of ₹ 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager **is invalid** due to the following reasons:

i. The amount of loan is more than **6 months' salary** of Mr. Surya Nayan, the HR Manager. It should have been restricted to ₹ 2,40,000 only.

ii. The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of **partly paid shares**.

Question 40

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

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

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

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

(ii) Whether the answer would be different in case only 25% shares of SSPL are held by SBL?

Answer

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

(a) is **not a Private Company**; and

(b) has a minimum paid-up share capital as may be prescribed:

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

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

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

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

As per section 67(3) of the Act, a company may provide the financial assistance, in case of lending money by a company to its **employees** (other than its directors or key managerial personnel), not exceeding **six-month salary** of the employees to enable them to buy or subscribe **fully paid shares** in the company or its holding company and to hold them by way of beneficial ownership.

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

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

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

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

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

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

Debenture [Section 71]

Question 41

Write short notes on the following in respect of the provisions of the Companies Act, 2013:

(i) Creation of debenture redemption reserve account.

(ii) Appointment of 'Debenture Trustee' by a company.

Answer

(i) **Creation of debenture redemption reserve (DRR) account:** According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account **out of the profits** of the company available for payment of dividend and the amount credited to such account shall **not be utilised by the company except for the redemption** of debentures.

(ii) **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the **public or to its members exceeding five hundred** for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

A debenture trustee shall take steps to **protect the interests** of the debenture holders and redress their grievances in accordance with the prescribed rules.

Question 42

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':

(i) A shareholder who has no beneficial interest.

(ii) A shareholder of the company who has shares of ₹ 10,000.

(iii) A creditor whom the company owes ₹ 499 only.

(iv) A person who has given a guarantee for repayment of amount of debentures issued by the company?

Answer

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a **prospectus** or make an offer or invitation to the **public or to its members exceeding five hundred** for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more **debenture trustees** and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a **written consent** shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

(i) **beneficially** holds shares in the company;

(ii) is a promoter, director or key managerial personnel or any other **officer or an employee** of the company or its holding, subsidiary or associate company;

(iii) is **beneficially entitled to moneys** which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) has furnished any **guarantee** in respect of the principal debts secured by debentures or interest thereon;

(vi) Has any **pecuniary relationship** with the company amounting to two percent. 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**;

(vii) is a **relative** of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

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

(i) A shareholder who has no beneficial interest, **can be appointed as a debenture trustee**.

(ii) A shareholder who has holds shares of ₹ 10,000, **cannot be appointed** as a debenture trustee.

(iii) A creditor whom company owes ₹ 499 **cannot be appointed as a debenture trustee**. The amount owed is immaterial.

(iv) 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 43

The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. Company seeks your advice regarding maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

Authorised Share Capital:

1,00,000 Nos. of Equity Shares of ₹100 each	1,00,00,000
Subscribed and Paid-up Share Capital:	
40,000 Nos. of Equity Shares of ₹ 100 each, fully paid-up.	40,00,000
Share Premium Reserve	50,00,000
General Reserve	30,00,000
Balance in Profit and Loss Account	20,00,000
Capital Reserve (profit on sale of Fixed Assets)	30,00,000
8% Non-Convertible Debentures	30,00,000
9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period)	20,00,000
Short-term Cash Credit Loan from XYZ Bank Limited (On hypothecation of stock and receivables of the Company, repayable on demand)	50,00,000

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

(i) The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?

(ii) What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?

Answer

(i) **The amount that can be raised by the Company by issuing Debentures:**

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue

debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with **Section 180(1)(c)** of the Act, shall obtain approval of the shareholders through **special resolution** if the borrowings by issuing debentures together with the amount already borrowed **exceed** the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be in cluded in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts **without** the approval of the shareholders through a **special resolution**:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	**1,40,00,000**

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non-Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	**50,00,000**

Here, Short–term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the **Board of Directors** in the Board Meeting **without** obtaining approval of the shareholders through **special resolution** passed in the General Meeting = (A) - (B) = ₹ **90,00,000**.

Further, the **Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹ 90,00,000**.

(ii) **Issue of Debentures with an Option to Convert into Shares:** According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an **option to convert** such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a **special resolution** passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, **it has to pass the special resolution** irrespective of the amount to be raised.

Miscellaneous

Question 44

State with reasons whether following statements are true or false:

(i) Bonus share can be issued to partly paid shares in proportion to paid-up value.

(ii) Notice of refusal to register transfer of shares by private company shall be sent only to the transferee within 30 days, stating reasons of refusal therein.

(iii) Passing an ordinary resolution is sufficient where the buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company.

(iv) CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.

(v) If interest to debenture holder remain un-paid for two years then they may vote on resolution affecting their interests.

Answer

(i) **False**, Bonus shares can only be issued against **fully paid**. The partly paid-up shares, if any outstanding on the date of allotment, are **made fully paid-up**.

(ii) **False**, notice of refusal shall be given to both **transferee and transferor** under section 58(1).

(iii) **False**, such buy-back has to be authorised by the **Board resolution** passed at its meeting.

(iv) **False**, the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as **fully paid bonus shares**.

(v) **False**, no debenture holder can **never assume voting right**, unless their debenture is converted in equity as per terms of issue. Though similar provision exist in case of preference dividend remain unpaid for two year to preference shareholder.

CHAPTER - 5
Acceptance of Deposits by Companies

Definition of Deposit [Section 2(31) and Rule 2(1)(c)]

Question 1

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:

(i) ₹ 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 a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) ₹ 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.

(iii) ₹ 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:

(i) ₹ 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).

(ii) ₹ 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 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 ₹ 1,50,000.

(iii) ₹ 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**. Further, according to Rule 16 (A) (2), it shall also disclose in its **financial statement**, by way of notes, about the **money received** from the directors, or relatives of directors.

Question 2

Sasha Private Limited received ₹ 3,00,000 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. Decide as per the relevant provisions of the Companies Act, 2013, whether the said amount received by the company will be considered as deposits or not.

Answer

According to sub-clause (viii) of Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who, at the time of the receipt of the amount, was a **director** of the company or a **relative** of the director of the **private company**, is not considered as deposit.

The director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, 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 and the company shall disclose the details of money so accepted in the **Board's report**.

₹ 3,00,000 received by Sasha Private Limited, 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).

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 3

Excel Pvt. Ltd. received ₹50 lakh from Mr. Giver. Mr. Giver was a director of the company at the time of the transaction. However, Mr. Giver did not submit any written declaration stating that the amount was not given out of borrowed funds. The company utilized the said funds for business expansion and disclosed the receipt of money in the Board's report.

Considering the provisions of the Companies Act, 2013, assess the following situations:

1. Was Excel Pvt. Ltd. compliant with the requirements w.r.t acceptance of the money from Mr. Giver?
2. If Mr. Giver had given the money out of funds borrowed from another person, whether this amount will considered as deposit?

Answer

According to Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, following categories of amounts, inter alia, are not considered as deposit:

Any amount received from a person who, at the time of the receipt of the amount, was a **director** of the company **or a relative of the director of the private company**;

However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to **furnish** to the company at the time of giving the money, 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 and the company shall **disclose** the details of money so accepted in the **Board's report**.

Accordingly,

1. Excel Pvt. Ltd. **failed to obtain a written declaration from Mr. Giver** at the time of receiving the amount. The **declaration is mandatory** to confirm that the funds are not borrowed or sourced from loans or deposits from others. Therefore, **Excel Pvt. Ltd. was not in compliance** with the requirements w.r.t acceptance of the money from Mr. Giver.
2. If Mr. Giver had given the money out of funds borrowed from another person, the transaction would not be eligible under an exempted category under the Companies Act, 2013. Consequently, **Excel Pvt. Ltd. would treat such an amount as a deposit**.

Question 4

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

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. As per rule 2(1)(c)(x) any amount received from an **employee** of the company not exceeding his **annual salary** under a contract of employment with the company in the nature of **non- interest-bearing security deposit** is not considered as deposit.

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

Accordingly, **₹ 5,30,000 received from Mr. Raj, 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. Raj is more than his annual salary of ₹ 5,00,000.

Question 5

The Promoters of Jayshree Spinning Mills Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?

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 Jayshree Spinning Mills Limited will not be regarded as deposit** as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

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

Question 6

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

(i) IQ Books Limited received share application money of ₹ 50 crore from investors on 8th December, 2024. As the issue was under subscribed, the company refunded the amount to the investors on 20th February, 2025.

(ii) Suraj, Raj and Tejas are the promoters of Precious Jewellers Limited. They borrowed a sum of ₹ 200 crore from ABC Bank Limited for its working capital purpose. The Bank imposed a stipulation that the promoters should contribute at least 20% of the amount borrowed. Hence, Suraj brought in ₹ 10 crore, Raj brought in ₹ 15 crore and Mr. K, father of Tejas brought in ₹ 15 crore.

(iii) Pretty Cosmetics Limited issued non-convertible debentures for ₹ 125 crore and listed it on a recognized stock exchange adhering to SEBI rules and regulations. The company created a charge on its assets in favour of the debenture holders and duly registered the charge.

Answer

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

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

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

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

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

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

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

(ii) As per sub-clause (xiii) of Rule 2 (1) (c) of Companies (Acceptance of Deposits) Rules, 2014, any amount brought in by the **promoters** of the company by way of **unsecured loan** in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

(a) the loan is brought because of the **stipulation imposed by the lending institutions** on the **promoters** to contribute such finance;

(b) the loan is provided by the **promoters** themselves or by their relatives or by both; and

(c) such **exemption** shall be available only **till** the loans of financial institution or bank are **repaid** and not thereafter.

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

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

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

Question 7

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

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

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

Answer

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

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

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

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

In the given question, RS Limited has received ₹ 50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30. 07.2019 the company adjusted the amount of ₹ 5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

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

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

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹ 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Question 8

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

Answer

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the **course of**, or for the purposes of, **the business** of the company, shall **not** be **considered as deposits**:

(a) any amount received as an **advance for the supply** of goods or provision of services accounted for in any manner whatsoever to be appropriated **within a period of three hundred and sixty-five days** from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.

(b) any amount received as advance in connection with consideration for an **immovable property** under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

(c) any amount received as **security deposit** for the performance of the contract for supply of goods or provision of services;

(d) any amount received as advance under **long term projects** for supply of capital goods except those covered under item (b) above;

(e) any amount received as 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) any amount received as an advance and as allowed by any **sectoral regulator** or in accordance with **directions of Central or State Government**;

(g) any amount received as an advance for subscription towards **publication**, whether in print or in electronic to be adjusted against receipt of such publications;

However, 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.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of **fifteen days** from the date it became due for refund

Provisions regarding Acceptance of Deposits from Members [Section 73]

Question 9

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 ₹ 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 10

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

According to first proviso to Rule 3 (3), 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.

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 any body-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.

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.

Question 11

Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

Answer

In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

No person including a company that is in the business of providing trusteeship services shall be **appointed as a trustee for the depositors**, if the proposed trustee:

(a) is a **director, key managerial personnel or any other officer or an employee** of the company or of its holding, subsidiary or associate company or a **depositor** in the company;

(b) is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any **material pecuniary relationship** with the company;

(d) has entered into any **guarantee arrangement** in respect of principal debts secured by the deposits or interest thereon;

(e) is **related** to any person specified in clause (a) above.

Question 12

Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

Answer

Appointment of Trustee for Depositors: In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

- One or more trustees for depositors need to be appointed by company for **creating security** for deposits.
- A **written consent** shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or **advertisement** with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a **deposit trust deed** in Form DPT-2 at least **seven days** before issuing the circular or circular in the form of advertisement.
- **No person** including a company that is in the business of providing trusteeship services shall be appointed as a **trustee** for the depositors, if the proposed trustee:
  - (a) is a **director, key managerial personnel or any other officer or an employee** of the company or of its holding, subsidiary or associate company or a depositor in the company;
  - (b) is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
  - (c) has any **material pecuniary relationship** with the company;
  - (d) has entered into any **guarantee arrangement** in respect of principal debts secured by the deposits or interest thereon;
  - (e) is **related** to any person specified in clause (a) above.
- No trustee for depositors shall be **removed** from office after the issue of circular or advertisement and before the expiry of his term except with the **consent of all the directors present** at a meeting of the board. In case the company is required to have independent directors, **at least one independent director** shall be present in such meeting of the Board.

Question 13

State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

Answer

Acceptance of deposits by a company from its members: As per section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a **resolution in general meeting** and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely-

(a) Issuance of a **circular to its members** including therein a **statement** showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) Filing a copy of the circular along with such statement with the **Registrar within 30 days** before the date of issue of the circular;

(c) Depositing, on or before the **thirtieth day of April** each year, such sum which shall not be less than **twenty per cent** of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

(d) Certifying that the company has **not committed any default** in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of **five years** had lapsed since the date **of making good the default**; and

(e) Providing **security**, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be **repaid with interest** in accordance with the terms and conditions of the agreement. Where a company **fails** to repay the deposit or part thereof or any interest thereon, the **depositor** concerned may apply to the **National Company Law Tribunal (NCLT)** for an order directing the company to pay the **sum due or** for any **loss or damage** incurred by him as a result of such non-payment and for such other orders as the NCLT may deem fit.

Exemption to certain private companies:

In terms of Notification No. GSR 464 (E), as amended from time to time, Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall **not apply to a private company**:

(A) which accepts from its members monies not exceeding **one hundred per cent** of aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a **start-up**, for **five years** from the date of its incorporation; or

(C) which fulfils **all** of the following conditions, namely:

  (a) which is **not an associate or a subsidiary** company of any other company;

  (b) if the **borrowings** of such a company from banks or financial institutions or any body corporate is less than **twice of its paid-up share capital or fifty crore rupees, whichever is lower**; and

  (c) such a company has **not defaulted in the repayment** of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the **Registrar** in the specified manner (i.e. in Form DPT-3).

Question 14

The following are the extracts from the financial statements of BUI Private Limited, which is neither a start-up nor it is an associate or subsidiary company of any other company.

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

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

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

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

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

Answer

Exemption to certain Private Companies:

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

The restrictions specified in the clauses (a) to (e) of sub-section (2) of section 73 with respect to certain restrictions for acceptance of deposits like issue of circular, filing the copy of such circular with the Registrar, **depositing of certain amount** and certification as to no default committed shall **not apply to a private company**. They are as follows:

(A) which accepts from its members monies not exceeding **one hundred percent** of the aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a **start-up**, for five years from the date of its incorporation; or

(C) which fulfils **all** of the following conditions, namely:-

  (a) which is **not an associate or a subsidiary** company of any other company;

  (b) if the **borrowings** of such a company from banks or financial institutions or any body corporate is **less than twice of its paid-up share capital or fifty crore rupees, whichever is lower**; and

  (c) such a company has **not defaulted in the repayment** of such borrowings subsisting at the time of accepting deposits under this section.

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

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

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

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

Provisions regarding Acceptance of Deposits from Public by Eligible Company [Section 76]

Question 15

Okara Limited, a company. having a net worth of ₹110 crore and a turnover of ₹450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public.

Answer

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

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

Question 16

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.

(i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ₹ 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Shriram Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?

(iii) The turnover of Y Ltd. is ₹ 400 crore as per last audited financial statement and net worth is ₹ 50 crores. Can Y Ltd. accept deposits from the public as per Companies Act, 2013?

Answer

(i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a **start-up** company receives rupees **twenty-five lakh or more** by way of a **convertible note** (convertible into equity shares or repayable within a period not exceeding **ten years** from the date of issue) in a **single tranche**, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received **₹ 20.00 lacs** from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is **below threshold limit of ₹ 25.00 lacs**. Hence, the amount of **₹ 20.00 lacs shall be considered as deposit** and the provisions for acceptance of deposit will apply accordingly.

(ii) According to 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 deposit **cannot exceed thirty-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:

(1) 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

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

In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six 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 three months from the date of such deposits.

(iii) 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), having a **net worth** of not less than **one hundred crore** rupees **or a turnover** of not less than **five hundred crore** rupees and which has obtained the prior consent in general meeting by means of a **special resolution** and also filed the said resolution with the **Registrar** of Companies before making any invitation to the public for acceptance of deposits:

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

Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of ₹ 400 crore and net worth of ₹ 50 crore. Hence, it **cannot be termed as an eligible company and thus cannot accept deposits from the public**.

Question 17

WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of ₹ 25 crore. According to financial results of the company as on 31.3.2022 net worth of the company was ₹ 120 crore and turnover for the year 2021-22 was ₹ 350 crore. The company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of ₹ 1.5 crore from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty-four months. Company in its books of account, records the receipt as a loan under non- current liabilities. At the time of advancing loan, Mr. Seth 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:

(i) 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?

(ii) With reference to the loan advanced by Mr. Seth to company, state whether the same is to be classified as a deposit or not?

Answer

(i) As per Rule 2(1)(e) 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 **₹ 100 crore or** a **turnover** of minimum **₹ 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 net worth of WEE Remedies Limited is ₹ 120 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 November 2022 which would be due for repayment on 30th September, 2027, 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.

(ii) 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**.

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

Question 18

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

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

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

According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its **members**, if the

amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed **ten per cent.** of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

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 19

State, with reasons, whether the following statements are 'True or False'?

(i) ABC Private Limited may accept deposits from its members to the extent of ₹ 50 lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 50 lakh.

(ii) 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

(i) 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 **thirty five per cent** 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 **one hundred per cent** 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.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of ₹ 50 lakh is **'true'.**

(ii) 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 **thirty five per cent** of the aggregate of its paid-up share capital, free reserves and securities premium account.

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

Question 20

Ashish Ltd. having a net-worth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members.

Answer

Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a **public company**, having **net worth** of not less than **100 crore** rupees **or turnover** of not less than **500 crore** rupees, can accept

deposits from **persons other than its members** subject to compliance with requirements provided in section 73 (2) and subject to rules as Central Government may, in consultation with Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the **rating** (including its net-worth, liquidity and ability to pay its deposits on due date) from a **recognised credit rating agency** for **informing the public** the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for **every year** during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it **cannot accept deposit from public other than its members**. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Question 21

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

(i) Referring to the provisions of the Companies Act, 2013, state whether Dolls Toys Limited is permitted to accept the deposits from public other than its members.

(ii) It is further mentioned that Dolls Toys Limited is in urgent need of funds as one of its contract is on the verge of completion and it is promising to repay the deposits within a period of four months. Is Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

Answer

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

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

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'.

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

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

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

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

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

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

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

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

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

Conclusion:

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

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

Question 22

What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

Answer

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an **'eligible company'** which desires to raise public deposits shall be required to obtain the **rating** (including its net-worth, liquidity and ability to pay its deposits on due date) from a **recognised credit rating agency**. The given rating which ensures adequate safety shall be **informed to the public** at the time of invitation of deposits from the public. Further, the rating shall be **obtained every year** during the tenure of deposits.

As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the **Registrar** of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall **not be below the minimum investment grade rating or other specified** credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

Question 23

Perfect Limited Company raised the secured deposit of ₹ 100 crores an 30th June, 2021 from the public on

interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	₹ 60 crores
Plant & machinery	₹ 20 crores
Factory Shed	₹ 20 crores
Trade Mark	₹ 20 crores
Goodwill	₹ 25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Answer

As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts **secured deposits from the public** shall within **30 days** of such acceptance, create a **charge** on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the **deposit holders** in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its **tangible assets only**.

The other notable points are:

- The company **cannot** create charge on **intangible assets** (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of **deposits accepted and interest** payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a **trustee for the depositors** on specific movable and immovable property of the company.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	60 + 20 + 20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the **charge is not validly created**.

Question 24

Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital	₹ 70 Crores
Securities Premium	₹ 20 Crores

Free Reserves	₹ 20 Crores
Long-term borrowings	₹ 50 Crores

The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.

(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.

(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.

Answer

(i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 **"eligible company"** means a **public company** as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a **net worth** of not less than **one hundred crore** rupees **or a turnover** of not less than **five hundred crore** rupees and which has obtained the prior consent of the company in general meeting by means of a **special resolution** and also filed the said resolution with the **Registrar** of Companies before making any invitation to the Public for acceptance of deposits.

Provided that an eligible company, which is accepting deposits within the limits specified under clause **(c) of sub-section (1) of section 180**, may accept deposits by means of an **ordinary resolution**.

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital: ₹ 70 crores

Free Reserves: ₹ 20 crores

Securities premium: ₹ 20 crores

Total: ₹ 110 crores

Hence, **Viki Limited is an eligible company**, since its Net worth is in excess of ₹ 100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) 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 deposit **cannot exceed thirty-six months**.

Exception to the rule of tenure of six months: As per the proviso to the above rule, 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.

As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable **not earlier than three months** from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from **persons other than its members**. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum **twenty-five per cent.** of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of 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.

Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = **11 crores.**

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) - 11 crores (outstanding deposit under plan A) = **16.5 crores**.

(ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to **thirty-five per cent.** of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = **38.5 crores**.

Punishment for Contravention of Section 73 or Section 76 [Section 76A]

Question 25

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.

(i) 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 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.

(ii) Polestar Traders Limited received a loan of ₹ 30 lakh from Rachna who is one of its directors. Advise whether it is a deposit or not.

or

Textile Traders Limited received a loan of ₹ 30,00,000 from R who is one of its directors.

(iii) City Bakers Limited failed to repay deposits of ₹ 50 crore and interest due thereon even after extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

(iv) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

Answer

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

In the given case, Zarr Technology Private Limited, a start-up company, received ₹ 30 lakh from Ritesh in a single tranche by way of a convertible note which is repayable within a period of 6 years from date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of **10** years from date of its issue, the amount of **₹ 30 lakh shall not be considered as deposit**.

(ii) 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**.

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 lakh 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 **₹ 30 lakh shall not be treated as deposit**.

(iii) By not repaying the deposit of ₹ 50 crore 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: **[Section 76A]**

- 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 crore.
- 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 lakh but which may extend to rupees two crore.

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).

(iv) 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 **nothing** in this sub-section shall **apply to a banking company and non-banking financial company** as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. Further, Rule 1 (3) (iii) states that the **Companies (Acceptance of Deposits) Rules, 2014 shall not apply to a housing finance company** registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore, the **'Acceptance of Deposits' Rules shall not apply to it**.

Hence, Diamond Housing Finance Limited being an exempted company, **can accept and renew deposits from the public from time to time without following the prescribed manner**.

CHAPTER - 6
Registration of Charges

Definition of Charge and Types of charges [Section 2(16)]

Question 1

What is 'Floating Charge'? When does it get crystallised?

or

What do you mean by Floating Charge and when it converts into a Fixed Charge?

Answer

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

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

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

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

Crystallization of a Floating Charge

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

(i) When the creditor **enforces the security** due to the **breach** of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company **ceases to continue its business**.

(iii) When the borrowing company goes into **liquidation**.

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

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.

Duty to Register Charges, etc. and Consequences of Non-Registration of Charge [Section 77]

Question 2

Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013.

Answer

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

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

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

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

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

Question 3

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

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

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

Answer

Registration by the Company creating a Charge

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

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

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

Question 4

Rose (Private) Limited on 3rd April 2019 obtained ₹ 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

(i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

Answer

As per the provisions of Section 2(16) of the Companies Act, 2013, "charge" means an **interest or lien** created on the property or assets of a company or any of its undertakings or both as **security** and includes mortgage.

(i) Whenever a company obtains working capital loans from financial institutions by **offering stock and Accounts Receivables** as security, **Rose (Private) Limited is required to create a charge** on such property or assets in favour of the lender. Hence, for ₹ 30 Lakhs working capital loan, it is required to create a charge on it.

Rose (Private) Limited is **not required to create a charge for ₹ 5 Lakh adhoc overdraft on the personal guarantee of a director**. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

(ii) As per the provisions of Section 77 of the Companies Act, 2013, in case the above charge was **not** registered within 30 days of creation of the charge, 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.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an **application to the Registrar** in the prescribed form. 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 advalorem fee, as applicable, must also be paid.

Question 5

Renuka Soaps and Detergents Limited realised on 2nd May, 2024 that particulars of charge created on 10th March, 2024 in favour of a Sankalp Commercial Bank Limited 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, 2024 instead of 2nd May, 2024? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer

The charge in the present case was created after 02.11.2018. The relevant provisions of the Companies Act, 2013 applicable in the present case are as explained below:

Initially, the prescribed **particulars** of the charge **together with the instrument** of charge, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the **Registrar within 30 days** of its creation. [Section 77 (1)]. In this case particulars of charge were **not filed within the prescribed period of 30 days**.

However, **Registrar** is empowered under clause (b) of first proviso to section 77 (1) to **extend** original period of 30 days **by another 30 days (i.e. 60 days from date of creation)** on payment of prescribed additional fee.

Taking advantage of this provision, **Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the jurisdictional Registrar of Companies** 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, 2024 instead of 2nd May, 2024, it shall be noted that a **period of sixty 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 sixty days** but the company is required to pay **ad valorem fees**.

Since the first sixty days from creation of charge have expired on 9th May, 2024, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 9th May, 2024 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 6

Define Charge.

Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013.

Answer

Section 2(16) of the Companies Act, 2013 defines "charge" as an **interest or lien** created on the property or assets of a company or any of its undertakings or both as **security** and includes a mortgage.

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the **Registrar** shall be **verified by** a certificate issued either-

- under the **seal**, if any, of the company, or
- under the hand of any **director or company secretary** of the company, or an **authorised officer** of the charge holder, or
- under the hand of some person other than the company who is **interested** in the mortgage or charge.

Question 7

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

Answer

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

(a) **in case property is situated outside India:** where the instrument or deed relates solely to the **property** situated **outside India**, the copy shall be verified by a certificate issued either under the **seal**, if any, of the company, or under the hand of any **director or company secretary** of the company or an **authorised officer of the charge holder** or under the hand of some person other than the company who is **interested** in the mortgage or charge;

(b) **in case property is situated in India (whether wholly or partly):** where the instrument or deed relates to the **property** situated **in India** (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any **director or company secretary** of the company or an **authorised officer** of the charge holder.

Question 8

Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ₹ 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.

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

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

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

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

(i) When trigger point for the registration of charge shall arise,

  (a) at the time of credit limit sanctioned by the Bank; or

  (b) at the time of availing of credit limit when cheque was issued by the company?

(ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd?

Answer

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

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

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

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

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

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

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

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

Application for Registration of Charge by Charge-holder [Section 78]

Question 9

Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:

(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?

(2) When can the Registrar refuse to register the charges the present scenario?

Answer

(1) Registration by charge holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

Accordingly, if a charge is created, the company is primarily responsible for **registering** the charge however it **fails to do so** within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. **charge-holder) may apply to the Registrar** for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the **Nationalized Bank can get the charges registered**.

(2) Registrar refuse to register the charges: However, the Registrar shall **not allow such registration** by the charge-holder, if the **company itself registers** the charge or shows **sufficient cause** why such **charge should not be registered**.

Acquisition of Property subject to Charge and Modification of Charge [Section 79]

Question 10

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**.

Deemed Notice of Charge [Section 80]

Question 11

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 came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Antriksh's 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**.

Question 12

City Bakers Limited obtained a term loan of ₹ 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013.

Answer

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is **registered under section 77**, 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, every person proposing to deal with a company, should verify whether the asset has any charge by going through record of charges maintained at office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such **registration of charge be deemed to be notice of charge** to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is **30 days** from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, 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. a grace period of **another 30 days** is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is **not registered** within the extended period also, then the company shall make an application and the **Registrar** is empowered to allow such registration to be made within a **further period of sixty days** after payment of prescribed **ad valorem fees**.

Company to Report Satisfaction of Charge [Section 82]

Question 13

Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Answer

In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the **Registrar** shall, on receipt of **intimation** under sub-section (1), cause a **notice to** be sent to the **holder of the charge** calling upon him to **show cause** within such time not exceeding **14 days**, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if **no cause** is shown by such holder of the charge, the registrar shall order that a **memorandum of satisfaction** shall be entered in the **register of charges** kept by him under Section 81 of the Act **and shall inform the company** that he has done so.

Intimation regarding Satisfaction of Charge

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

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

Question 14

State, with reasons, whether the following statements are True or False?

(i) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

(ii) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

Answer

(i) According to the proviso to section 82(2) of the Companies Act, 2013, **no notice** shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and **signed by the holder of charge**.

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

(ii) As per section 82 of the Companies Act, 2013, requires a **company** to give **intimation of payment or satisfaction** in full of any charge earlier registered, to the **Registrar** in the prescribed form. The intimation needs to be given **within a period of 30 days** from the date of such payment or satisfaction.

However, **Registrar** may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made **within 300 days** of such payment or satisfaction on payment of prescribed additional fees.

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

Question 15

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

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

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

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

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

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

Answer

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

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

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

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

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

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

3. **Issue of Certificate:** As per Rule 8 (2) of the Companies (Registration of Charges) Rules, 2014, in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a **certificate** of registration of satisfaction of charge in Form No. CHG-5.

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

As SPM bank has already issued a no dues certificate, DNC Hydro Limited should file form CHG-4 within the extended period of limitation i.e. within 30 to 300 days. Accordingly, Registrar may, on an application by the

company allow such intimation of payment or satisfaction to be made within a period of **300 days** of such payment or satisfaction on payment of prescribed fees. Registrar shall **not cause any notice to be sent to SPM Bank** in this case as NOC has been issued by it and just register satisfaction after payment of prescribed fees.

Power of Registrar to make Entries of Satisfaction and Release in Absence of Intimation from Company [Section 83]

Question 16

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

or

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

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

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

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.

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.

Register of Charges [Section 81 and 85]

Question 17

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**:

(1) by any member or creditor without any payment of fees; or

(2) by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.

Question 18

What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.

Answer

Time limit for registration of charge with the registrar: According to section 77 of the Companies Act, 2013, it shall be duty of the **company creating a charge** within or outside India, on its property or assets or any of its undertakings, to **register the particulars** of the charge, on payment of such fees and in such manner as may be prescribed, **with the registrar within 30 days** of creation.

The **Registrar** may, on an application by the company, allow such registration to be made within a period of **60 days of such creation**. In other words, a grace period of another 30 days is granted after the expiry of the original 30 days, on payment of additional fees as prescribed.

If the charge is **not registered** 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**.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014].

Place of keeping company's register of charges: According to section 85 of the Companies Act, 2013, every company shall keep at its **registered office** a register of charges.

Inspection of the register of charges and instrument of charges: The register of charges and 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 such fees as may be prescribed,

-subject to such reasonable restrictions as the company may, by its articles, impose.

Question 19

'A company is required to keep a Register of Charges at its Registered Office'. Considering this statement, mention the provisions of the Companies Act, 2013 in respect of keeping of Register of Charges by the companies.

Answer

In respect of keeping of Register of Charges by a company, Section 85 of the Companies Act, 2013 and Rules 10 as well as 11 of the Companies (Registration of Charges) Rules, 2014 are relevant.

(i) According to section 85 (1):

- Every company shall keep a Register of Charges in the prescribed form and manner at its **registered office**.

  Note: Rule 10 (1) specifies Form CHG-7 in which the Register of Charges shall be maintained.

- The Register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case the prescribed particulars.

(ii) According to Proviso to section 85 (1):

- A copy of the instrument creating the charge shall also be kept at the **registered office** along with the Register of Charges.

(iii) Provisions of Rule 10 are as under:

- Entry of Particulars of all Charges: According to Rule 10 (1), the company shall **enter** in the Register particulars of all the charges registered with the Registrar on any of its property, assets or undertakings and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- When to make Entries: According to Rule 10 (2), the **entries** in the Register shall be made forthwith **after the creation, modification or satisfaction of charge**, as the case may be.
- Who can authenticate Entries: According to Rule 10 (3), the **entries** in the Register shall be **authenticated** by a director or the secretary of the company or any other person authorised by the Board for the purpose.

Inspection of Register of Charges and Instrument of Charges: As regards inspection, section 85 (2) 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.

Similarly, regarding inspection, Rule 11 states that the Register of Charges and the instrument of charges kept by the company shall be open for inspection-

(a) by any member or creditor of the company without fees;

(b) by any other person on payment of fee.

Preservation of Register: According to Rule 10 (4) the **Register of Charges** shall be preserved **permanently**. However, the **instrument creating a charge or modification** thereon shall be preserved for a period of **eight years** from the date of satisfaction of charge.

Rectification by Central Government in Register of Charges [Section 87]

Question 20

ABC Limited created a charge in favour of OK Bank which was duly registered. Later on, the Bank enhanced the facility by another ₹ 20 crore. Due to inadvertence, the modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

Answer

ABC Limited is advised to immediately file an **application for rectification** of the Register of Charges in Form No. CHG-8 with the **Central Government** in accordance with Section 87 of the Companies Act, 2013.

Section 87 and Rule 12 empower the **Central Government** to **order rectification** of Register of Charges in the following cases of default:

(i) when there was **omission** in giving intimation to the Registrar with respect to **payment or satisfaction** of charge within the specified time;

(ii) when there was **omission or mis-statement** of any particulars in any filing previously made **to the Registrar**. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be **extended**' or the 'omission or mis-statement shall be **rectified**', the **Central Government** needs to be satisfied that such default was **accidental** or due to inadvertence or because of some other sufficient cause or it was not of a nature to prejudice the position of creditors or shareholders of the company.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, OK Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Question 21

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges.

Answer

(1) **Rectification by Central Government in register of charges:** Section 87 of the Companies Act, 2013 empowers the **Central Government** to **make rectification** in register of charges on being satisfied that-

(a) the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or **mis-statement of any particular** with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was **accidental** or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(2) The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-

(a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

(b) direct extension of time for satisfaction of charge, if such filing is not made within a period of three hundred days from the date of such payment or satisfaction.

Punishment for Contravention [Section 86]

Question 22

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

Answer

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 'an **interest or lien** created on the property or assets of a company or any of its undertakings or both as **security** and includes a mortgage'.

Punishment for contravention-According to section 86 of the Companies Act, 2013, if any company is in **default** in complying with **any of the provisions** of Chapter VI, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person **willfully** furnishes any false or incorrect information or **knowingly** suppresses any material information which is required to be registered under section 77, he shall be liable for action under **section 447** (punishment for fraud).

CHAPTER - 7
Management and Administration

Register of security holders [Section 88 to 91, 94 and 95]

Question 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.

Question 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.

Question 3

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

In this respect Rules 5 (7) and 5 (8) of Companies (Management and Administration) Rules, 2014 are relevant.

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 **fifteen 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 **fifteen days** from such an event.

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 4

The paid-up share capital of Golden Shoes Limited is ₹ 25,00,000 divided into 2,50,000 equity shares of ₹ 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

Answer

Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country **outside India**, a part of the **register** of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners **residing outside India**.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, **within 30 days** from the date of the opening of any foreign register, file with the **Registrar notice of the situation of the office** along with the fee where such Register is kept.

Accordingly, **Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022** (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

Question 5

Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.

(i) Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.

(ii) Whether Mr. Rich, a director holding only 400 shares of worth ₹ 4000, has the right to inspect the Register of Members?

or

Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members?

Answer

(i) 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.

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.

(ii) 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.

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 6

M/s. Techno 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.

(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

Answer

(i) **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.

So, Techno 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.

(ii) As per section 94(2) of the Companies Act, the **inspection** of the records, i.e. registers and indices, and annual return can be done 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.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has **no right to inspect** the Register of Members of company without payment of fees, as per the provisions of this section.

However, any other person (other than specified above) may also **inspect** the Register of members of company **on payment of fees**.

Hence, Mr. Ranjit can inspect the Register of Members on payment of such fees as may be prescribed.

Question 7

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[24] 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 [constituted under section 125 (5)];

(b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;

(c) the Central Government, State Government or any local authority;

(d) (i) a reporting company; or

(ii) a body corporate; or

(iii) an entity,

controlled wholly or partly by the Central Government and/or State Government(s);

(e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;

(f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

Annual Return [Section 92 and 94]

Question 8

The paid-up share capital of Disha Home Appliances Limited is ₹ 8 crore divided into 80 lakh shares of ₹ 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

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 which state that the Annual Returns of following companies shall be **certified by a company secretary in practice**:

(i) a **listed company**; or

(ii) a **company having paid-up share capital of ₹ 10 crore or more or turnover of ₹ 50 crore or more**.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to ₹ 10 crore or more or its turnover becomes ₹ 50 crore 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 9

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

(i) Abridged Form of Annual Return

(ii) Signing of Annual Return

Answer

(i) Abridged Form of Annual Return

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

As per Rule 11(1) **One Person Company and small company** shall file annual return in Form MGT-7A.

(ii) Signing of Annual Return

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

In relation to **One Person Company, small company and private company** (if such private company is a start-up), the annual return shall be signed by the **company secretary**, or where there is no company secretary, by the **director** of the company.

Question 10

ABC Pvt. Ltd. is a One Person Company (OPC) incorporated in 2024. The company has not appointed a company secretary due to its small scale of operations. At the end of the financial year 2024-25, the company needs to file its annual return. The director in state of dilemma, consulted the company law expert whether they need to submit a full- fledged annual return or an abridged version and who should sign the document.

Based on the provisions of the Companies Act, 2013, advise on the following:

(i) What form should ABC Pvt. Ltd. use to file its annual return?

(ii) Who is authorized to sign the annual return?

Answer

According to section 92(1) of the Companies Act, 2013, every company shall prepare a return (referred to as the Annual Return) in the prescribed form containing the specified particulars as they stood on the close of the financial year. In terms of Second Proviso to section 91 (1), 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. Accordingly, as per Rule 11 (1), One Person Company and small company shall file the annual return from the financial year 2020-2021 onwards in **Form No. MGT-7A**. However, in relation to One Person Company and small company, the annual return shall be **signed by the company secretary**, or where there is no company secretary, by the **director** of the company.

Accordingly, following are the advice given by the expert:

(i) As per Section 92 and Rule 11(1), since ABC Pvt. Ltd. is a One Person Company (OPC), it should file its annual return in **Form MGT-7A (abridged form)** for the financial year 2024-25.

(ii) In the absence of a company secretary, the annual return should be signed by the **sole director** of the company as per the provisions applicable to One Person Companies.

Question 11

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT-7. Explain the particulars required to be contained in it.

Answer

Every company is required to file with the Registrar of Companies, the **annual return** as prescribed in section 92, **in Form MGT–7** as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its **registered office**, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other **securities and shareholding pattern**
3. Its **members and debenture-holders** along with the **changes** therein since the close of the previous financial year;
4. Its **promoters, directors, key managerial personnel** along with **changes** therein since the close of the previous financial year;
5. Meetings of members or a class thereof, Board and its various committees along with attendance details;
6. **Remuneration** of directors and key managerial personnel;
7. Penalty or **punishment** imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
8. Matters relating to certification of **compliances**, disclosures;
9. Details in respect of shares held by or on behalf of the **Foreign Institutional Investors** including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
10. Such other matters as may be prescribed.

Question 12

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

(i) Time limit for filing of annual return when Annual General Meeting is held.

(ii) Time limit for filing of annual return when Annual General Meeting is not held.

Answer

Time limit for Filing of Annual Return

(i) A copy of annual return shall be **filed with the Registrar of Companies (RoC) within 60 days** from the date on which the **Annual General Meeting ('AGM')** is held.

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

Question 13

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

According to section 92(4) of the Companies Act, 2013, every company shall **file with the Registrar** a copy of the annual return, **within sixty 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.

Sub-section (5) of Section 92 also states 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 ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

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.

General Meetings [Section 96 to 100, 102 and 121]

Question 14

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

(i) First AGM of company shall be held within a period of 6 month from date of closing of first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.

(iv) There shall be a maximum interval of 15 months between two AGMs.

Answer

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

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

(ii) According to proviso to section 96(1), the **Registrar** may, for any **special reason**, extend the time within

which any annual general meeting, **other than the first annual general meeting**, shall be held, by a period not exceeding **three months**.

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

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

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

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

Hence, given statement is **correct**, that there shall be a maximum interval of 15 months between 2 AGMs.

Question 15

State with reason whether the following statement is correct or incorrect:

(i) An annual general meeting can be held on a national holiday.

(ii) A company should file its annual return within six months of the closing of the financial year.

Answer

(i) An annual general meeting **cannot be held on a national holiday**. Under section 96 (2) of the Companies Act, 2013 every annual general meeting shall be called during **business hours, that is, between 9 a.m. and 6 p.m.** on any day that is **not a National Holiday**. A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.

Thus, the statement 'An annual general meeting can be held on a national holiday' is **incorrect**.

(ii) The statement is **incorrect** in terms of section 92 (4) of the Companies Act, 2013.

Section 92 (4) states that every company shall **file with the Registrar** a copy of the annual return, **within sixty 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, with such fees or additional fees as may be prescribed.

Question 16

Infotech Ltd. was incorporated on 1.4.2022. No General Meeting of the company has been held till 30.4.2024. 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

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 2022 to 31st March 2023, the first Annual General Meeting (AGM) of the company should be held **on or before 31st December, 2023**.

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.

Thus, the **first AGM of Infotech Ltd. should have been held on or before 31st December, 2023**. Further, in case of first AGM, the **Registrar of Companies does not have the power to grant extension** of any time limit.

Question 17

Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard.

Suppose, Rijwan Limited is unlisted company and wants to call their 6 th AGM at Jaipur, will your answer differ.

Answer

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during **business hours, that is, between 9 a.m. and 6 p.m.** on any day that is **not a National Holiday** and shall be held either at the **registered office** of the company or at some other place **within the city, town or village** in which the registered office of the company is situate.

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.

Thus, in the first case, the **company is rightful in calling the Annual General meeting at Ansal Plaza**.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, AGM can be called at Jaipur, otherwise not.

Question 18

Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022- 23 as under:

(i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.

(ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 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— 'National Holiday' means and includes day declared as National Holiday by Central Government.

In the instant case,

(i) Sunshine Limited, an unlisted company, can hold its AGM on 28th September, 2023 which happens to be a holiday declared by U.P. Government because this is **not a national holiday**.

(ii) **Sunshine 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 38 members out of 40 has given their consent for conducting the meeting in Lonavala.

Question 19

Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

Answer

According to Section 121, every **listed public company** shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the **Registrar** in Form No. MGT. 15 **within thirty days** of the conclusion of AGM along with the prescribed fee. If the company **does not file such report on Annual General Meeting within 30 days** of the conclusion of the Annual General Meeting, then the company and defaulting officers are liable for prescribed penalties.

Since, Pristine Ltd. is a listed company, hence **it has to file a copy of Annual Report with the Registrar within 30 days from 31st August, 2020**.

Question 20

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 jurisdictional Registrar a copy of Report on its AGM.

(i) State within how much time it is required to file the said Report.

(ii) 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

(i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto-parts 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.

(ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which **fails** to file with the jurisdictional **Registrar of Companies** a copy of the Report on its Annual General Meeting **within the specified time** limit, shall be liable to the following penalty:

- **Company:** ₹ One lakh and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ five lakh.
- **Every officer who is in default:** Minimum ₹ twenty-five thousand and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ one lakh.

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 thirty days, it shall be liable to the above stated penalty which may go maximum up to ₹ five lakh 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 ₹ one lakh in case of continuing failure.

Question 21

Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

(i) EGM be held in India

(ii) EGM be held in Netherlands

Answer

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

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

In the light of the above provisions:

(i) The **Board of Directors can call the EGM in India**.

(ii) The **Board of Directors cannot call the EGM of Primal Limited outside India** as it is a company incorporated in India.

Question 22

Silk Textile Limited is a company which is incorporated in India. It holds two subsidiaries- Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Silk Textile Limited intends to call an Extraordinary General Meeting (EGM) of Silk Textile Limited. During the same time, the Board of Print Limited also wanted to hold an EGM on urgent basis at Dubai. The Chairman with the consent of his Board wanted to hold the EGM of Silk Textile Limited at Dubai so that he can attend both the EGM. But the Company Secretary advised the Chairman that he cannot hold the EGM outside India.

Referring to the provisions of the Companies Act, 2013, advise the Board of Directors on whether the Board of Silk Textile Limited can hold its EGM at Dubai?

Answer

Can the Board of Silk Textile Limited can hold its EGM at Dubai?

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

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

As per the facts given in the question, Silk Textile Limited is a Company incorporated in India and has two

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

Question 23

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, 2024. 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, 2024 is a National Holiday**.

Question 24

The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10th voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2024. 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 of 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.

Question 25

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

Raman is having 50,000 shares in the company. He is not happy with Somnath, who is a director in the company. He believed that Somnath is acting against the interest of the company. Raman wanted to remove Somnath from the directorship. Removal of a person from the directorship requires the approval of the

shareholders in the general meeting. The Annual General Meeting (AGM) of the company has recently been concluded and the next AGM will be held in the next year. Considering the case and referring to the provisions of the Companies Act, 2013, advise:

(i) Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?

(ii) If the company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM?

Answer

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

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

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

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

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

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

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

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

Question 26

TST Limited has Equity Share Capital of 10,000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1,500 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

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.

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.

Pre-Requisites of a Meeting [Section 101 and 102]

Question 27

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, notice of every meeting of company shall be given to:

(1) every **member** of the company, legal representative of any deceased member or the assignee of insolvent member;

(2) the **auditor** or auditors of the company;

(3) every **director** of the company.

Question 28

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 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized.

A notice may be sent through **e-mail** as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance **opportunity at least once in a financial year**, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email id s are already registered.

In the light of the above provisions of the Act, the **company's obligation** shall be satisfied when it **transmits the e-mail** and the company shall not be held responsible for a failure in transmission **beyond its control**. Also, if the **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.

Question 29

Madurai Bakes Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2024. The notice was posted to the members on 16th August, 2024. 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:

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does notice fall short of statutory requirement?

(iii) Can the delay in giving notice be condoned?

Answer

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.

Hence, in the given question:

(i) 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**.

(ii) As explained in (i) above, **notice falls short by 2 days**.

(iii) 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 30

The paid-up share capital of Aakash Soaps Limited is ₹ 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 ₹ 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 ₹ 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**.

Question 31

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 ₹ 30 crore divided into 3 crore shares of ₹ 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

Normally, general meetings are to be called by giving at least **21 clear days' notice** as required by Section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving **shorter notice** than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto-

(i) in the case of an **annual general meeting**, by not less than **ninety-five per cent.** of the **members** entitled to vote thereat; and

(ii) in the case of **any other general meeting**, by members of the company-

  (a) holding, if the company has a share capital, **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

  (b) having, if the company has no share capital, not less than **ninety- five per cent. of the total voting power** exercisable at that meeting.

Second proviso to Section 101 (1) clarifies that 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 sub section (1) of section 101 in respect of the **former resolution** or resolutions and not in respect of the latter.

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 32

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013.

Answer

Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of **at least 21 clear days'**, before meeting, should be given to all **members**, legal representative of deceased member or assignee of insolvent members, the **auditors** and **directors**, in writing, electronic mode or other prescribed mode.

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 in the case of an **annual general meeting**, by not less than **ninety-five per cent. of the members** entitled to vote thereat

In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e. less than 95% members). Hence, such **meeting cannot be said to be validity called**.

Question 33

Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of ₹ 1,000 crore. According to financial statements as on 31st March, 2023, paid-up capital of company was ₹ 600 crore and free reserves were ₹ 650 crore. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.

MCL is planning to expand its existence throughout the country. For this purpose, company has taken ₹ 200 crore term loan and ₹ 125 crore of working capital loan from Banks on 18th June, 2023. Charge was created on all the assets of company on that day for above loan of ₹ 325 crore, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.

MCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22nd August, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plan.

With reference to provisions of the Companies Act, 2013, answer the following questions:

(i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?

(ii) Which type of Charge was created by company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of the Companies Act, 2013?

(iii) Whether the notice given to convene AGM at shorter notice was in compliance of the Companies Act, 2013?

Answer

(i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 shall be kept at the **registered office** of the company. Section 88(1) provides that every company shall keep and maintain the register of members.

However, such registers 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.

So, **Majboot Cement Limited (MCL) can keep the Registers of Members at Faridabad** (as around 15% of total members are resident of Faridabad) by passing a Special Resolution at a general meeting.

(ii) A **'Floating Charge'** is created on assets or a class of assets which are of **fluctuating nature or changing in nature** like raw material, stock-in-trade, debtors, and the like. The assets under floating charge **keep on changing** because the borrowing company is **permitted to use** them for trading or producing final goods for sale.

In the instant case, since charge was created on all the assets of company on that date (i.e. on 18th June, 2023) for loan of ₹ 325 crore, it is type of Floating Charge.

As per section 77 of the Companies Act, 2013, if the registration of charge was 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. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is **not registered** 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 sixty days** after payment of prescribed **ad valorem fees**.

In the instant case, MCL created a charge on 18th June, 2023 but failed to register it. On 18th August, it filed the application for registration of charge. Since the charge has to be filed by 17th August, 2023 (within 60 days from 18th June, 2023) with additional fees, the application can be filed within a further period of sixty days i.e. by 17th October, 2023 after payment of prescribed ad valorem fees.

(iii) According to section 101(1) of the Companies Act, 2013, 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 in the case of an **annual general meeting**, by **not less than 95% of the members** entitled to vote thereat.

In the instant case, MCL wants to convene AGM on 10 September, 2023 by giving shorter notice which is consented by only 78% of members. Hence, **shorter notice is not in compliance** with provisions of Act.

Question 34

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

or

M. H. Mechanics 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. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

Answer

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any general 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 following **material facts** concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:

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

  (i) every director and the manager, if any;

  (ii) every other key managerial personnel; and

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

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

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

Question 35

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

Answer

(i) Section 96(2) of the Companies Act, 2013, states that every **annual general meeting** shall be called during **business hours, that is, between 9 a.m. and 6 p.m.** on any day that is **not a National Holiday** and shall be held either at the **registered office** of the company or at some other place **within the city, town or village** in which the registered office of the company is situated.

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, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was **validly called**.

(ii) Section 102 of the Companies Act, 2013 mentions that where any **special business** is to be transacted at the company's general meeting, then an **'Explanatory Statement'** should be annexed to the notice calling such general meeting, which must specify, the **nature of concern or interest**, financial or otherwise, if any, in respect of each item of every director and the manager, if any.

Effect of non-disclosure: As per section 102(4), if as a result **non-disclosure or insufficient disclosure** in explanatory statement, any **benefit** accrues to a director, such director shall **hold such benefit in trust for the company**, and shall be liable to **compensate** the company to the extent of the benefit received by him.

If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [Section 102(5)].

Question 36

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

(i) Resolution to increase the Authorised share capital of the company.

(ii) Appointment and fixation of the remuneration of Mr. Prateek as the 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), an **explanatory statement** setting out the following **material facts** concerning each item of **special business** to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:

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

  (i) every director and the manager, if any;

  (ii) every other key managerial personnel; and

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

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

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. Prateek as the auditor.

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

Members attending General Meeting of Company [Section 103, 105, 112, 113 and 116]

Question 37

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

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.

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 38

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

Answer

Section 105 of the Companies Act, 2013 deals with the provisions of proxy for meetings.

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

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

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting.

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

Question 39

A General Meeting was scheduled to be held on Friday, 15th April, 2024 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 09.04.2024 was deposited by Mr. Y with the company at its registered Office on 11.04.2024. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12.04.2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14.04.2024. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

Answer

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** 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 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.

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 40

What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.

Answer

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

The various provisions relating to the appointment of a proxy are contained in section 105 of the Companies Act, 2013. They 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 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 41

There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1st July 2024 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.

Question 42

Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2024 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**.

Question 43

Examine the validity of the following situation with reference to relevant provisions of Companies Act, 2013:

The Board of Directors of Shreya Transporters and Logistics 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. Advise the company.

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 44

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**:

(1) **five members** personally present if the number of members as on the date of meeting is **not more than one thousand**,

(2) **fifteen members** personally present if the number of members as on the date of meeting is **more than one thousand but up to five thousand**,

(3) **thirty members** personally present if the number of members as on the date of the meeting **exceeds five thousand**,

shall be the **quorum** for a meeting of the company.

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

Question 45

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

(a) Quorum for the general meeting if the company has 800 members.

(b) Quorum for the general meeting if the company has 6500 members.

(c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

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**:

(1) **five members** personally present if the number of members as on the date of meeting is **not more than one thousand**,

(2) **fifteen members** personally present if the number of members as on the date of meeting is **more than one thousand but up to five thousand**,

(3) **thirty members** personally present if the number of members as on the date of the meeting **exceeds five thousand**.

shall be the **quorum** for a meeting of the company.

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

(a) If the company has 800 members, quorum shall be **5 members personally present**.

(b) If the company has 6500 members, quorum shall be **30 members personally present**.

(c) If the company has 5500 members, quorum shall be 30 members personally present. However, since the articles of association has prescribed the quorum for the meeting to be 50, the **quorum shall be 50** (higher of 30 and 50).

Question 46

PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual General Meeting to be held on 2nd September 2019 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.

On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a Private company?

Answer

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**, **fifteen members** personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is **more than one thousand but up to five thousand**.

If the specified 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.

If at the **adjourned meeting** also, a **quorum** is **not present within half-an-hour** from the time appointed for holding meeting, the **members present shall be the quorum**.

In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the **AGM conducted by PQ Limited after adjournment is valid**.

As per the provisions of section 103(1)(b), in case of a **private company**, **two members** personally present, shall be **quorum** for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only **two members personally present shall be the quorum for AGM** and there was **no need for adjournment**.

Question 47

Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which 14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:

(i) Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?

(ii) Whether Mr. Rahi could adjourn the meeting in the current scenario?

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.

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

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

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

Thus, the requisite **quorum was present**.

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

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

Question 48

The Articles of Association of DJA Water Tanks 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 general meeting to consider the appointment of Managing Director:

(i) A is the representative of Governor of Uttar Pradesh.

(ii) B and C are preference shareholders,

(iii) D is representing Y Ltd. and Z Ltd.

(iv) E, F, G and H are proxies of shareholders.

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

Answer

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 purpose 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**.

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 proxies representing the members.

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

Question 49

KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2024 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.

1. P1, P2 & P3 shareholders
2. P4 representing ABC Ltd.

3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders
   (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
   (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
   (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
   (iv) What happens if there is no Quorum at the adjourned meeting?

Answer

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

(i) (1) P1, P2 and P3 will be counted as three members.

(2) If a company is a member of another company, it may authorize a person by resolution to act as its **representative** at a meeting of the latter company, then such a person shall be **deemed to be a member present in person and counted for the purpose of quorum**. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.

(3) Only members present in person and not by proxy are to be counted. Hence, **proxies** whether they are members or not will have to be **excluded for the purposes of quorum**. Thus, P6 and P7 shall not be counted as constituting 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 Cables Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the **requirement of quorum is fulfilled**.

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

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

(iii) In case of lack of quorum, the **meeting will be adjourned** as provided in section 103 of the Companies Act, 2013.

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

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

Question 50

LKJ Ltd. is a company having paid up share capital of ₹ 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned

to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

Answer

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

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

(a) the meeting shall stand **adjourned** to the **same day in the next week at the same time and place**, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by **requisitionists** under section 100, shall stand **cancelled**:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give **not less than three days' notice to the members** either **individually or by publishing an advertisement** in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

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

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

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

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

(iii) If the quorum is **not present within half-an-hour** from the time appointed for holding a meeting of the company, the meeting, if called by **requisitionists** under section 100, shall stand **cancelled**.

Resolutions [Section 114]

Question 51

Give the points of distinction between ordinary resolution and special resolution.

Answer

Difference between ordinary resolution and Special resolution

Ordinary Resolution-

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the **notice** required under this Act has been duly given and it is required to be passed by the **votes cast**, whether on a show of hands, or electronically or on a poll, as the case may be, **in favour** of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, **exceed the votes**, if any cast **against** the resolution by members, so entitled and voting.

Simply put, the **votes cast in the favour** of the resolution, by any mode of voting **should exceed the votes cast against it**.

Special Resolution-

As per Section 114(2) of the Act, a resolution shall be a special resolution, when-

(a) The **intention** to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) The **notice** required under this Act has been duly given; and

(c) The **votes cast in favour** of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than **3 times the number of the votes**, if any, **cast against** the resolution by members so entitled and voting.

Question 52

At a General meeting of a XYZ Limted, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

Answer

Under Section 114(2) of the Companies Act, 2013, for a valid **special resolution** to be passed at a meeting of members of a company, the following conditions need to be satisfied:

(1) The **intention** to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;

(2) The **notice** required under the Companies Act must have been duly given of the general meeting;

(3) The **votes cast in favour** of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than **3 times** the number of **votes**, if any, **cast against** the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. **Abstentions or invalid votes**, if any, are **not to be taken into account**.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the **decision of the Chairman is in order**.

Question 53

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 sake of avoiding confusion & mixing up, resolutions are moved separately. However, there is nothing illegal if Chairman of 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.

Question 54

Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

Answer

For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the annual general meeting. However, there is nothing illegal if the Chairman of the meeting desires 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.

One resolution which should be **moved separately** is relating to **appointment of directors** at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, **all the nine businesses cannot be moved together** as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, **other seven resolutions can be moved together** if the members unanimously agree.

Resolution raised by Members [Section 111 and 115]

Question 55

Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ₹ 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.

(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

Answer

(i) 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. ₹ 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.

(ii) 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:

(a) Two or more copies of the requisition are required to contain **signatures** of all the requisitionists i.e. Prakash and friends.

(b) Requisition must be deposited by them at CP where **registered office** of Focus Limited is situated.

(c) 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.

(d) In case of any other requisition, the same is to be deposited by them not less than **two weeks** before the meeting.

(e) A **sum** reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing resolution shall also be **deposited** by Prakash and his friends along with requisition.

Question 56

Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.

Answer

Resolutions requiring special notice [Section 115]

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a **special notice** is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of **members** holding not less than **1% of the total voting power**, or holding shares on which such aggregate sum not exceeding **₹ 5,00,000/- has been paid-up**. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to **appoint as auditor** a person other than a retiring auditor under **Section 140** of the Act.

According to the given facts in the question, there is **non-compliance** of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Voting [Section 106 to 110]

Question 57

Mr. Pink held 100 partly paid-up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

Answer

Section 106 (1) of Companies Act, 2013 states that **articles** of a company may provide that **no member shall exercise any voting** right in respect of any shares registered in his name on which any **calls** or other sums presently payable by him have **not been paid**, or in regard to which company has exercised any **right of lien**.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and **Mr. Pink's contention is not valid**.

Question 58

'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.

Answer

Restriction on voting rights [Section 106 of the Companies Act, 2013]

According to the said Section:

(1) Notwithstanding anything contained in this Act, the **articles** of a company may provide that **no member shall exercise any voting right** in respect of any shares registered in his name on which any **calls** or other sums are presently payable by him have **not been paid**, or in regard to which the company has exercised any **right of lien**.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, **LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid**.

Question 59

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, voting in case of joint shareholders is done in the **order of seniority**, which is determined on the basis of order in which their **names appear in the register** of members. The joint-holders have 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 60

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than $1/10^{th}$ of 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.

(ii) 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

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, section 109 (1) lays down as under:

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 of 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 for poll: According to section 109 (2), the demand for a poll may be **withdrawn** at any time by the persons who made the demand.

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

(i) The **chairman cannot reject the demand for poll** subject to the provisions contained in the articles of company.

(ii) The **chairman cannot reject the request of the members for withdrawal** of the demand for poll.

Question 61

If a member of a listed company who has casted his vote through electronic voting, can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

Answer

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

Thus, in the given question, if a member of a listed company has casted his vote through electronic voting, he can still **attend the general meeting of the company but neither he can vote again nor he can change his vote** and is not permitted to appoint a proxy.

Question 62

Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.

Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

Answer

According to section 103(1)(a)(i) of the Companies Act, 2013, unless the **articles** of the company provide for a **larger** number, in case of **public company**, if the number of members as on the date of meeting is **not more than one thousand**, **five members** personally present shall be the **quorum** for a meeting of the company. In the instant case, the quorum for the public company will be 5 members personally present.

In the said company, two members are bodies corporate and one member is the President of India.

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.

As per section 113 of the Companies Act, 2013, 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 and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the **President of India**, 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 and shall be **entitled to vote**.

Question 63

Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:

(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?

or

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

(ii) AGM is going to be held on 07.09.2020. Then what will be the e- voting period and the time of closing?

Answer

(i) Joint shareholders must concur in voting unless the articles provide to the contrary.

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/shareholders. The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the **first named holder** or in his absence to the joint holder attending the meeting as appearing in the **chronological** order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/shareholders shall be entitled to vote.

(ii) Time period for e-voting: The facility for remote e-voting shall remain **open for not less than three days** and shall **close at 5.00 p.m. on the date preceding** the date of the **general meeting**.

Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e- voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

Question 64

Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07.09.2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e-voting period and the time of closing of remote e-voting.

Answer

Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has **listed its equity shares** on a recognised stock exchange and company having **not less than one thousand members** shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
2. The facility for remote e-voting shall remain **open** for **not less than three days** and shall **close at 5.00 p.m.** on the **date preceding** the date of the **general meeting**.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the **facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.**

Minutes [Section 118]

Question 65

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

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:

(i) is or could reasonably be regarded as **defamatory** of any person;

(ii) is **irrelevant** or immaterial to the proceeding; or

(iii) 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) of section 118.

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 66

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

(i) Matters not to be included in the minute, as per the opinion of the Chairman.

(ii) Maximum time allowed for entering minutes of proceedings.

Answer

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

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

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

Question 67

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

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.

Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that 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**.

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:

(i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.

(ii) there should be entered the result of the voting made by the shareholders in respect of resolution.

(iii) there should be entered the summary of the scrutinizer's report.

(iv) 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 68

Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2024. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2024, 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

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep **minutes** of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot **within thirty days** of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

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

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

Inspection of Minutes Books of General Meeting [Section 119]

Question 69

Mr. Ram, a shareholder of PQR Ltd., has made a request to the company for providing a copy of minutes book of general meeting. Whether the shareholder of a company is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013.

Answer

In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any **member** shall be entitled to be furnished, **within seven working days after he has made a request** in that behalf to the company, with a **copy of any minutes** of any general meeting, on payment of such **sum as may be specified in the articles of association** of the company.

As Mr. Ram, in the given case, is the shareholder of PQR Ltd., so shall be **entitled to receive a copy of any minutes book of general meeting**.

Question 70

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

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?

(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

Answer

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

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

Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he **can inspect** the minutes book and so to have **soft copies of the same up to last three years**.

(ii) As provision does not specify anything on authorizing anyone else to inspect the minutes book. Therefore, **Mr. Laurel cannot authorize his friend to inspect the minutes book** on behalf of him.

CHAPTER - 8
Declaration and Payment of Dividend

Provisions regarding Payment of Dividend [Section 123 and 126]

Question 1

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-

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall **not** be treated as **free reserves**.

Question 2

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2023-2024. The company announced 7th September 2024 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 3rd September 2024.

Mr. Binoy was the holder of 2000 equity of shares since 31st March, 2018, but he transferred the shares to Mr. Mohan in 2024, whose name has been entered in the register of members on 18th June, 2024. Who will be entitled to the above dividend?

Answer

According to section 123, dividend shall be paid by a company only to the **registered shareholder** of such share.

Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be **entitled to dividend**.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e. Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan who is the registered shareholder on the record date.

Question 3

Alex limited is facing loss in business during the financial year 2023-2024. 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?

or

XYZ Limited is a company having a paid up equity share capital of ₹ 75 crore. Though it was performing well in the recent years it suffered losses in the first and second quarter of the financial year 2023-2024. In order to sustain its image, the Board of Directors declared an interim dividend at the rate of 30 percent on the paid-up equity share capital on 4.10.2023. The following are the additional information extracted from the books of account for the past 5 Financial Years:

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

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 30% interim dividend

Answer

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

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

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2023-2024. In the immediate 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 2023-2024 is **not valid**.

Question 4

Whether a Company can declare dividend for the financial year in which it incurred loss.

Answer

As per Second Proviso to Section 123 (1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the **free reserves**. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Question 5

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 special part of machine, company incurred loss in current financial year.

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

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) 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

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 three financial years**.

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

Accordingly, following shall be the answers:

(i) **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%**.

(ii) **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**.

Question 6

Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

Answer

As per second proviso to Section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is **absence of profit** or there are **no adequate profits** for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

(a) The **rate of dividend** declared shall **not exceed** the **average of the rates** at which dividend was declared by the company in the **three years immediately preceding** that year.

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

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

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

(d) 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.

Hence, if the company wants to pay dividend in the current financial year, **it can do so if all the above conditions have been fulfilled**.

Question 7

Capricorn Industries Limited has a paid-up capital of ₹ 200 lakh and accumulated Reserves of ₹ 240 lakh. Loss for the year ending 31st March 2024 is ₹ 30 lakh. Dividend was declared at the following rates during the three years immediately preceding.

Year 1	9%
Year 2	10%
Year 3	12%

What is the maximum rate at which the company can declare dividend for the current year?

Answer

In the given case, Capricorn Industries Limited has **not made adequate profits** during the current year ending on 31st March, 2024, but it still wants to declare dividend. Let us apply the conditions:

Condition I:

$$\text{Average rate} = \frac{9 + 10 + 12}{3} = \mathbf{10.33\%}$$

Therefore, the rate of dividend shall not exceed 10.33%.

i.e. 10.3% of Paid up Capital i.e. ₹	200 lakh =	₹	20.6 lakh

Condition II:

Paid-up capital + Free reserves	=	₹ (200 + 240) lakh	
(Assuming all reserves are free)		₹ 440 lakh	
10% thereof	=	₹ 44	lakh
Less: loss for the year **[Condition III]**	=	₹ 30	lakh
Amount available	=	**₹ 14**	**lakh**

Hence, the quantum of dividend is further restricted to **₹ 14 lakh**.

Condition IV:

Amount of reserves available **after adjustment of current year loss**	= ₹ 210 lakh
Proposed withdrawal declaration of dividend	₹ 14 lakh
Balance of Reserves	₹ 196 lakh
This is more than 15% of paid-up capital (i.e 15% of ₹ 200 lakh) i.e.	₹ 30 lakh.

Thus, the **company can declare a dividend of ₹ 14 lakh i.e. at a rate of 7%** on its paid- up capital of ₹ 200 lakh.

Question 8

MNP Ltd. has a paid up share capital of ₹ 10 crore and free reserves of ₹ 50 crore, as on 31st March, 2019. The company made a loss of ₹ 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

Answer

As per Second Proviso to Section 123 (1), in the event of **inadequacy or absence of profits** in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

(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**.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this **condition is fulfilled**.

(ii) The total **amount to be drawn** from free reserves shall not exceed one-tenth i.e., **10% of its paid-up share capital and free reserves** as per the latest audited financial statement.

Amount of dividend proposed: ₹ 2 Crores (20% of ₹ 10 Crore i.e on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ₹ 6 Crore.

This **condition is fulfilled** as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(iii) The amount so drawn shall first be utilized 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.

(iv) After such withdrawal from free reserves, the **residual reserves** shall not fall below **15% of its paid-up share capital** as per the latest audited financial statement.

Balance of reserves after payment of dividend: ₹ 48 crore (50 crore – 2 crore)

15% of paid up share capital: 1.5 crore (15% of 10 crore)

This **condition is fulfilled**.

Taking into account all the conditions, it can be said that **declaration of dividend by MNP Limited is valid**.

Question 9

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

The dividend thus proposed is to be met partially out of the current year profit of ₹ 16 lakh. Accumulated profits during past 8 years were ₹ 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

or

Stridewalk Limited, a listed company engaged in the manufacturing and export of premium shoes and accessories, has been undergoing financial restructuring over the past few years. After several years of operational losses and sluggish growth, the Board recently appointed a new Production Manager, Mr. Arjun Mehra, whose strategic improvements have helped to revive the company's margins and production efficiency.

In light of the improved performance and renewed investors' confidence, the Board of Directors, at its meeting held on 20th April, 2025, resolved to recommend a final dividend of ₹ 50 lakh to its equity shareholders — a notable development as this would be the first dividend declaration in eight years.

The financial data available is as follows:

- Current year profit (after providing for depreciation and necessary reserves): ₹ 16 lakh
- Accumulated profits /free reserves over the past eight years: ₹ 170 lakh
- Paid-up share capital of the company: ₹ 680 lakh
- The proposed dividend of ₹ 50 lakh is intended to be funded partly from the current year's profit and partly from the accumulated profits of previous years.

As the current year's profits alone are not sufficient to meet the proposed dividend payout, the company plans to draw from free reserves as permitted under the Companies Act, 2013.

With reference to the provisions of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014, examine whether the proposed dividend declaration by Stridewalk Limited complies with the legal conditions applicable in the case of inadequate profits.

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

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

Fulfilment of Conditions mentioned in Rule 3

Conditions	**Calculation**		**Met/Not Met**
I	This condition is **not applicable** the company has not declared any dividend in each of the three preceding financial year.		-
II	Paid-up share capital and free reserves	680 + 170	**Met**
		= 850 lakh (C)	
	10% of (C)	85 lakh	
	Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C)		
III	The company has since made profit in the financial year in which dividend is declared.		**Met**
IV	Free Reserves (D)	170 lakh	**Met**

	Amount drawn for payment of dividend (E)	34 lakh	
	Balance of reserves after such withdrawal (F) = (D) - (E)	136 lakh	
	15% of its paid up share capital (G)	102 lakh	
	(F) more than (G)		

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

Question 10

A company has accumulated Free Reserves of ₹ 75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ₹ 12 lakhs. The Board proposes a payment of dividend of ₹ 30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?

Answer

In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are **no adequate profits** for declaring dividend, the company may declare dividend out of the profits of any previous year 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.

Conditions of Rule 3:

Condition 1: 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**.

Condition 2: 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 3: 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.

Calculations For Each Condition

Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

Thus, condition 1 shall **not be applicable** on the company in question as it has not declared dividend in last 5 years.

Condition 2: As per the facts, the Board proposes a payment of dividend of ₹ 30 lakhs i.e., 30% on the paid up capital.

So, the Paid up Share Capital of the company = ₹ 100 Lakh

Paid-up Capital + Free Reserves = 100+ 75 = ₹ 175 Lakh

10% thereof = ₹ 17.5 Lakh

Hence the dividend to be declared is to be restricted to ₹ 17.5 Lakh.

Condition 3:

Here, Free Reserves = ₹ 75 Lakh

Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh

Balance of Reserves = ₹75 Lakh- 17.5 Lakh = ₹ 57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ₹ 100 Lakh) i.e. ₹ 15 Lakh.

Thus, company can declare a dividend of ₹ 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ₹ 100 lakh.

Hence, the **proposal of company** for payment of dividend of ₹ 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of ₹ 12 lakh, is **invalid**.

Question 11

AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹ 20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:

1.	Equity Share Capital (₹ 10 each)	-	100 lakhs
2.	General Reserve	-	150 lakhs
3.	Debenture redemption Reserve	-	50 lakhs

The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard.

If allowed to declare dividend, then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

Answer

In the given case, AB Limited has **not made adequate profits** during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

According to the said rule, the required conditions are:

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 **three years immediately preceding** that year. Since the company has **not declared** any dividend in the **preceding three financial years**, hence **condition I is not applicable in this case**.

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.

Paid-up capital + Free reserves	=	₹ (100 + 150) Lakhs (General reserves are free reserves)
	=	₹ 250 Lakhs
10% thereof	=	**₹ 25 Lakhs**

Condition III: The amount so drawn shall first be **utilized to set off the losses** incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

The amount drawn as stated above	=	₹	25	Lakhs
Less: loss for the financial year 2019-2020	=	₹	20	Lakhs
Amount available	=	₹	**5**	**Lakhs**

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.

Accumulated Reserves	₹ 150 Lakhs
Proposed withdrawal declaration of dividend	₹ 5 Lakhs
Balance of Reserves	₹ 145 Lakhs

This is more than 15% of paid-up capital (i.e. 15% of ₹ 100 Lakhs) i.e. ₹ 15 lakhs. Thus, the **company can declare a dividend of ₹ 5 lakhs**.

Hence, by following above provisions, **AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹ 5 Lakhs**.

Timeline for Payment of Dividend [Section 124 and 127]

Question 12

ASR Limited declared dividend at its Annual General Meeting held on 31.12.2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

Answer

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

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

Question 13

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?

Answer

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has **not been paid/claimed** to/by shareholder **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/unclaimed to the **Unpaid Dividend Account**.

The company shall, within a period of **90 days** of making any transfer of an amount, prepare a **statement** containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the **web-site of the company**, if any, **and also on any other web-site approved by the Central Government** for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, **RST Ltd. failed to give statement of Unpaid/unclaimed dividend** and so **liable for the said noncompliance of section 124** of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. **failed to comply** with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

Question 14

Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.

Answer

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

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

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

If any money transferred to this Unpaid Dividend Account remains **unpaid or unclaimed for a period of seven years** from the date of transfer of such account, it shall be **transferred** by the company along with interest accrued thereon to the **Investor Education and Protection Fund** established under section 125(1) of the Companies Act, 2013 maintained and administered by the Central Government.

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

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

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

Question 15

Mr. R, holder of 1000 equity shares of ₹ 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of ₹ 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.

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

Answer

According to section 124 of the Companies Act, 2013:

(1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account-** Where a dividend has been declared by a company but has **not been paid or claimed within thirty (30) days** from the date of declaration, the company shall, **within seven (7) days** from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the **Unpaid Dividend Account (UDA)**. The UDA shall be opened by the company in any scheduled bank.

(2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)-** Any money transferred to the Unpaid Dividend Account which remains **unpaid or unclaimed for a period of seven (7) years** from the date of such transfer shall be transferred by the company along with interest accrued thereon to the **Investor Education and Protection Fund.**

(3) **Transfer of Shares to IEPF-** All **shares** in respect of which dividend has not been paid or claimed for **7 consecutive years** or more shall be transferred by the company in the name of **Investor Education and Protection Fund** along with a **statement** containing the prescribed details.

(4) **Right of Owner of 'transferred shares' to Reclaim-** Any claimant of shares so transferred to IEPF shall be entitled to **reclaim** the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

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

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

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

(i) If Mr. R wants to reclaim the **transferred shares**, he should **apply to IEPF authorities along with the necessary documents** in accordance with the prescribed procedure.

(ii) He is **also entitled to get refund of the dividend amount**, which was transferred to the above fund; in accordance with the prescribed rules.

Punishment for Failure to Distribute Dividends within 30 days [Section 127]

Question 16

Mr. Alok, holding equity shares of face value of ₹ 10 lakh, has not paid ₹ 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

or

ABC Ltd. has declared dividend of ₹ 2 per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ₹ 10 face value each, on which ₹ 10,000 towards call money is due. Whether dividend amount payable to him be adjusted against such dues as per provisions of Companies Act, 2013? Give reasons for your answer.

Answer

Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be **lawfully adjusted** by the company **against any such dues**.

Thus, the **action of the company adjusting dividend payable to Mr. Alok** towards call money due on shares amounting to ₹ 80,000 **is justified** and therefore, **no punishment** is attracted.

Question 17

The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013 and give your opinion if Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

Answer

The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been **lawfully adjusted** by the company **against any sum due** to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, **company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A**.

Question 18

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:

(i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.

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

Question 19

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2024, 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, 2024. 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

Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section 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 of dividend to any shareholder entitled to the payment of dividend:

(a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(b) the company shall be liable to pay simple interest at the rate of **18% per annum** during the period for which such default continues.

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 20

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2023-24, except in the following two cases:

(i) 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.

or

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.

(ii) 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

(i) 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 her.

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**.

(ii) 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**.

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 21

The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	Dividend Declaration Date	Dividend Amount (₹)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value ₹ 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):

(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?

(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

Answer

(a) According to Section 127 of the Companies Act, 2013

In case a company **fails to pay** declared dividends **or fails to post dividend warrants within 30 days** of declaration, then the company shall be liable to pay **simple interest at the rate of 18% p.a.** during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05.06.2015, section 127 dealing with punishment shall apply to the **Nidhis**, subject to the following modification:

In case the **dividend** payable to a **member is ₹ 100 or less**, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in **one local newspaper** of wide circulation and announcement of the said declaration is also displayed on the **notice board** of the Nidhi company for **at least 3 months**.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, **within 30 days** of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (₹)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (₹)
800	25.08.2022	800×18%×29/365	**11**

(ii) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a **Nidhi company** and dividend payable to Mr. Vaibhav was ₹ 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the **dividend** declared was announced by the company in local language in **one local newspaper** of wide circulation and announcement of the said declaration was also displayed on the **notice board** of the company for **at least 3 months** i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then **no punishment could be imposed** upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which **dividend gets accumulated and any arrears** of such dividend arising due to insufficiency of profits **during the current year is payable from the profits earned in the later years**.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may **accumulate such dividend for financial year 2021-22** to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

Question 22

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

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**.

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.

(i) 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**.

(ii) 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.

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 two years and shall also be liable for a minimum fine of rupees one thousand 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.

Other Provisions related to Dividend [Section 8 and 123]

Question 23

Brix Shipyards Limited has earned a profit of ₹ 1,000 crore for the financial year 2023-24. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

or

For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

Answer

The amount to be transferred to reserves out of profits for any financial year has been left to the **discretion of the company**. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even **not transfer** any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any amount of profits to the reserves.

Question 24

During the financial year 2016-17, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor, to accommodate the said interim dividend.

(i) Examine the validity of the Board's decision under the provisions of the Companies Act, 2013.

(ii) Examine what will be your answer, if the Board proposes to transfer more than 10% of the profits of the company to the reserves for the current year before the declaration of any dividend?

Answer

(i) According to 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.

Interim Dividend can be revoked with the consent of **all shareholders**.

Further, **Final Dividend when declared** becomes a **debt** and a shareholder is entitled to recovery of the same after expiry of 30 days as prescribed under Section 127 of the Companies Act, 2013. Section 2(14A) of the Act defines dividend to include interim dividend. Therefore, dividend once declared becomes a debt and payable within 30 days of declaration.

In the present case, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor.

However, in view of the above, the Board of directors cannot revoke the second interim dividend. But it can be revoked with the consent of all shareholders.

Therefore, **decision of the Board** to revoke the declared 2nd Interim dividend by itself is **invalid**.

(ii) The amount to be transferred to reserves out of profits for any financial year has been left to the **discretion of the company**. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even **not transfer** any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, **Perfect Limited is justified** in its action.

Question 25

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

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.

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 26

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

(i) Whether the Company has complied due diligence in declaring interim dividend?

(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?

(iii) What are the penal consequences in case of failure to pay the interim dividend?

Answer

(i) According to section 123(3) of the Companies Act, 2013, **Board of Directors** of a company may declare interim dividend **during** any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the **surplus in** the **profit and loss account** or out of **profits of the financial year** for which such interim dividend is sought to be declared or out of profits generated in the financial year till the **quarter preceding** the date of declaration of the interim dividend.

In the instant case, Sun Light Limited has **complied due diligence** in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to section 8 (1) of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is **prohibited from paying any dividend** to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) **Penal consequences:** 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 thirty days** from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay **simple interest at the rate of eighteen per cent per annum** during the period for which such default continues.

Question 27

YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2023-2024 out of the profits of current year. The company has earned a profit of ₹ 910 crore during 2023-2024. 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

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 ₹ 910 crore for the financial year 2023-2024. 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. 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.

Investor Education and Protection Fund (IEPF) [Section 125]

Question 28

State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013.

Answer

Credit of amount to the Fund: There shall be credited to the Investor Education and Protection Fund the following amounts-

(a) **Amount given by the Central Government-** the amount given by the **Central Government by way of grants** after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(b) **Donations by the Central Government-** donations given to the Fund by the **Central Government, State Governments, companies or any other institution** for the purposes of the Fund;

(c) **Amount of Unpaid Dividend Account-** the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under section 124(5);

(d) **Amount of the general revenue account of the Central Government-** the amount in the general revenue account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;

(e) **Amount in IEPF-** the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;

(f) **Income from investments-** the interest or other income received out of investments made from the Fund;

(g) **Amount received through disgorgement or disposal of securities-** The amount received under section 38(4) i.e. amount received through disgorgement or disposal of securities under section 38(3) shall be credited to the IEPF provided under section 38(4);

(h) **Application money-** the application money received by companies for allotment of any securities and due for refund;

(i) **Matured deposits-** matured deposits with companies other than banking companies;

(j) **Matured debentures-** matured debentures with companies;

(k) **Interest-** interest accrued on the amounts referred to in clauses (h) to (j);

(l) **Amount received from sale proceeds-** sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) **Redemption amount-** redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) **Other amount-** such other amount as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

CHAPTER - 9
Accounts of Companies

Books of Account, etc., to be kept by Company [Section 128]

Question 1

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 two 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 2

Define the term 'Book of account' as per the Companies Act, 2013.

Answer

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

(i) all sums of **money** received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all **sales and purchases** of goods and services by the company;

(iii) the **assets and liabilities** of the company; and

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

Question 3

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh 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-

(i) a **balance sheet** as at the end of the financial year;

(ii) a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) **cash flow statement** for the financial year;

(iv) a statement of changes in **equity**, if applicable; and

(v) any **explanatory** note annexed to, or forming part of, any document referred to in sub- clause (i) to sub-clause (iv):

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

In the instant case, **Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement**; since Geeta Private Limited is a start-up private company

Question 4

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 Limited cannot maintain its books of account on cash basis.

Question 5

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. Advice.

Answer

According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a **true and fair view** of the state of the affairs of the company, including that of its branch office or offices, if any, and **explain the transactions** effected both at the registered office and its branches and such books shall be kept on **accrual basis** and according to the **double entry system** of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place **in India** as the **Board of Directors** may decide and where such a decision is taken, the company shall, **within seven days** thereof, file with the **Registrar** a notice in writing giving the full address of that other place. Further company may keep such books of account or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.

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 6

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st

March, 2020 is as below:

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

(2) The turnover is ₹ 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?

Answer

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

(a) paid-up share capital of which does not exceed **four crore** rupees, and

(b) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed **forty crore** rupees:

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

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

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 totalling ₹ 50 lakhs). Hence, **Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company**.

Further, the paid up share capital (₹ 50 lakhs) and turnover (₹ 2 crores) is within the limit as prescribed under section 2(87), hence, **Smart Solutions Private Limited can be categorised as a small company**.

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

(a) a **balance sheet** as at the end of the financial year;

(b) a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(c) **cash flow statement** for the financial year;

(d) a statement of changes in **equity**, if applicable; and

(e) any **explanatory note** annexed to, or forming part of, any document referred to in point (a) to (d):

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

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

Question 7

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.

Answer

According to section 2(10) of the Companies Act, 2013,

Financial statement in relation to a company, includes-

(i) a **balance sheet** as at the end of the financial year;

(ii) a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) **cash flow statement** for the financial year;

(iv) a statement of changes in **equity**, if applicable; and

(v) any **explanatory note** annexed to, or forming part of, any document referred to in sub- clause (i) to sub-clause (iv):

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 cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

(i) One-person company–It is given that the **company is having 40 members** and also its name does not contain the words 'OPC', so it is **not a one person company**.

(ii) Small company–A company which is a **subsidiary** company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as **Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also**.

(iii) 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.

(iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is **not a start- up company** and also, as per proviso to section 2(71) of the Act, 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.

So, **Sankul (P) Ltd. shall be deemed to be a public company** as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that **Sankul (P) Ltd. is mandatorily required to prepare cash flow statement** for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013.

Question 8

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of accounts

Answer

(i) Inspection by Directors

As per Section 128(3) of the Companies Act, 2013, any **director** can inspect the books of account and other books and papers of the company during **business hours**. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the **books of account of the subsidiary**, only on authorisation by way of the **resolution of Board of Directors**.

Assistance by officers and Employees

As per Section 128(4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(ii) Period for preservation of books

According to section 128(5) of the Companies Act, 2013, the **books of accounts**, 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.

In case of a company incorporated **less than eight years** before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an **investigation** has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the **Central Government** may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Question 9

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**.

Question 10

XYZ Ltd., uses an Accounting Software for recording its financial transactions.

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

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

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

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

(i) Audit trail and Edit Log requirements

(ii) The back-up of books of accounts.

Answer

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

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

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

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

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

(2) Every such company (which uses accounting software) shall use only such accounting software,

(3) Which has a feature of recording **audit trail** of each and every transaction,

(4) Creating an **edit log** of each change made in books of account along with the date when such changes were made and

(5) Ensuring that the audit trail **cannot be disabled**.

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

Advice to the Company:

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

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

(ii) The back-up of books of accounts

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

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

Question 11

(i) Ravi Limited maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

(ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Account of a company.

(iii) Whether a company can keep books of Account in electronic mode accessible only outside India?

Answer

(i) 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**.

(ii) Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

(iii) 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,

(a) 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, 2023, 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**.

(b) 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.

(c) The **back-up** of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in **servers physically located in India** on a daily basis.

Hence, a **company cannot keep books of account in electronic mode accessible only outside India**.

Question 12

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 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 BBQ Ltd. 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

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

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

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

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

2. Where a company has a **branch** office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

   a. Proper **books of account** relating to the transactions effected at the branch office are **kept at that office**, and

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

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

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

Financial Statement [Section 129]

Question 13

Madan Pvt. Ltd. is a partially owned subsidiary of Puri Ltd., holding 90% of its shares. The company does not have any listed securities and is not in the process of listing on any stock exchange. Puri Ltd., the holding company, prepares and files consolidated financial statements (CFS) with the Registrar in compliance with applicable Accounting Standards. Considering the above, analyze and examine the following situations:

1. Is Madan Pvt. Ltd. required to prepare its own consolidated financial statements? What are the requisite conditions for the same?
2. How does it matters, if Madan Pvt. Ltd. had securities listed on a recognized stock exchange?

Answer

As per section 129 of the Companies Act, 2013, where a company has one or more **subsidiaries or associate companies**, it shall (in addition to financial statements **prepare a consolidated financial statement (CFS)** of the company and of all the subsidiaries, associate companies and joint ventures in the same form and manner as that of its own and in accordance with applicable accounting standards. Such CFS shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

Exemptions from preparation of CFS

According to section 129(3), the preparation of consolidated financial statements by a company is **not required** if it meets the following conditions:

a. It is a wholly owned subsidiary, or is a partially owned **subsidiary** of another company and all its **other members**, including those not otherwise entitled to vote, having been **intimated** in writing and for which the proof of delivery of such intimation is available with the company, **do not object** to the company not presenting consolidated financial statements;

b. It is a company whose securities are **not listed** or are not in the process of listing on any stock exchange, whether in or outside India; and

c. Its ultimate or any intermediate **holding** company **files consolidated financial statements** with the Registrar which are in compliance with the applicable Accounting Standards.

In line with stated legal requirements, following are the answers:

1. Madan Pvt. Ltd. may qualify for an exemption from preparing consolidated financial statements because:
   - It is a partially owned subsidiary (90% ownership by Puri Ltd.).
   - It does not have any listed securities and is not in the process of listing on any stock exchange i.e., have no publicly trading of securities.
   - Its holding company, Puri Ltd., prepares and files consolidated financial statements with the Registrar in compliance with applicable Accounting Standards.

   Since Madan Pvt. Ltd. is a partially owned subsidiary, it must ensure that remaining shareholders (10% in this case), are informed in writing about the decision not to present CFS, and it must maintain proof of delivery of such communication. No member should object to this exemption.
2. If Madan Pvt. Ltd. had its securities listed on a recognized stock exchange or was in the process of being listed, it would **not qualify for the exemption and would be required to prepare and present its own consolidated financial statements** as per the applicable provisions.

Periodical Financial Results [Section 129A]

Question 14

XYZ Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

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 XYZ Ltd.** is an unlisted company, periodical financial results need not be prepared, **is not correct**. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Content of Board's Report, Abridged Board's Report and Directors' Responsibility Statement [Section 134 (3), (3A), (4) & (5)]

Question 15

(i) Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries–Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner

the subsidiaries–Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss?

(ii) 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 explain any three matters to be furnished in the said statement.

Answer

(i) According to section 129(3) of the Companies Act, 2013, where a company has one or more **subsidiaries or associate** companies, it shall, in addition to financial statements provided under sub-section (2), **prepare a consolidated financial statement (CFS)** of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the **annual general meeting** of the company along with the laying of its financial statement under sub-section (2).

The company shall also attach **along with its financial statement**, a separate **statement** containing the **salient features** of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following relevant provisions of Companies Act, 2013 compliant with applicable **Accounting Standards**.

(ii) **Directors' Responsibility Statement:** According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that-

(1) in the preparation of the annual accounts, the applicable **accounting standards** had been followed along with proper explanation relating to material departures;

(2) the directors had selected such **accounting policies** and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of state of affairs of company at the end of financial year and of profit and loss of company for that period;

(3) the directors had taken **proper and sufficient care** for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(4) the directors had prepared the annual accounts on a **going concern** basis; and

(5) the directors, in case of listed company, had laid down **internal financial controls** to be followed by company and that such internal financial controls are adequate and were operating effectively.

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

Authentication of FS, CFS and Board's Report [Section 134 (1), (6) & (7)]

Question 16

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.

Question 17

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.

Question 18

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 Company Secretary.

The financial statements of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of company was in accordance with provisions of Companies Act, 2013?

Answer

According to section 134(1) of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be **approved by the Board of Directors** before they are **signed on behalf of the Board** by the **chairperson** of the company where he is authorised by the Board **or by two directors** out of which one shall be **managing director**, if any, **and the Chief Executive Officer, the Chief Financial Officer and the company secretary** of the company, wherever they are appointed, or in the case of **One Person Company**, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, **Mr. Indersen, the Managing Director should be one of the two signing directors**. Since, the company has also employed a **Company Secretary, he should also sign** the financial statements.

Question 19

Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the

Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

Answer

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be **approved by the Board of Directors** before they are **signed on behalf of the Board** by at least:

(1) The **Chairperson** of the company where he is authorized by the Board; or

(2) **Two directors** out of which one shall be the managing director and

(3) The **Chief Executive Officer and** The **Chief Financial Officer** and the **Company Secretary** of the company, wherever they are appointed.

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.

The **Board's report** and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is **one director**.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of provisions of Section 134 (1), the **Managing Director Mr. D should be one of the two signatories**. Since, the company has also employed a **full time Secretary, he should also sign** the Balance Sheet and Profit & Loss Account. Therefore, **authentication done by two directors is not valid**.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the **authentication is in order**.

Right of Members to Copies of Audited Financial Statement [Section 136]

Question 20

RELM 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 RELM Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, RELM Industries Limited has placed its audited financial statement including consolidated financial statement on its website. RELM 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 country of incorporation. You are required to examine whether RELM Industries Limited has complied with the provisions of section 136?

Answer

No, RELM Industries Limited has not complied with the provisions of section 136 because RELM 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 (RELM Industries Limited 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.

Question 21

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:

Sr. No.	Particulars
1	A member individually holding shares with face value of ₹ 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ₹ 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid- up share capital of the company.

In the AGM held on 25th August, 2022, members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

Answer

In case of Nidhi company-

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of **members** who do not individually or jointly hold shares of more than **one thousand rupees in face value or more than one per cent**, of the total paid-up share capital, whichever is **less**, it shall be sufficient compliance with the provisions of the section if an **intimation** is sent by public notice in **newspaper** circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be **inspected** at the registered office of the company and the financial statement with enclosures are affixed in the **notice board** of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such **notice of AGM and other relevant documents** to members who individually or jointly hold shares of more than ₹ 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:

(i) Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital

(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Copy of Financial Statement to be Filed with Registrar [Section 137]

Question 22

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

(i) Who shall sign Board's Report

(ii) Filing of financial statements with the Registrar when AGM is not held

Answer

(i) **Signing of Board's Report** [Section 134(6)]: The Board's report and any annexures thereto under section 134(3) shall be **signed** by its **chairperson** of the company if he is authorised by the Board and where he is **not so authorised**, shall be signed by at least **two directors**, one of whom shall be a **managing director**, or by the director where there is one director.

(ii) **Annual General meeting not held** [Section 137(2)]: 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 thirty 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 23

(i) The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31st March 2024, 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?

(ii) Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27th September 2024 but the same were not adopted by the shareholders?

Answer

(i) In the present case, though **AGM was not held**, it ought to be held by 30th September 2024 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 30th October 2024 along with such fees or additional fees as may be prescribed.

(ii) Since the AGM has been held in time on 27th September 2024, 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.

Question 24

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 25

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 31st March 2024, 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 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.

Question 26

A Housing Finance Ltd. is a housing finance company having a paid-up share capital of ₹ 11 crore and a turnover of ₹ 145 crore during the financial year 2023-24. 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

As per Rule 3(1) of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, 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:

(i) Companies **listed** with stock exchanges in India and their **Indian subsidiaries**;

(ii) Companies having **paid up capital of five crore rupees or above**;

(iii) Companies having **turnover of one hundred crore rupees or above**;

(iv) All companies which are required to prepare their financial statements in accordance with Companies **(Indian Accounting Standards)** Rules, 2015.

Provided further that non-banking financial companies, **housing finance companies** and companies engaged in the business of banking and insurance sector are **exempted from filing** of financial statements under these rules.

Hence **A Housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode**.

Question 27

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 2022-23 were placed at its annual general meeting held on 31st 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. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2023 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 12th November, 2023. 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

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are **not adopted at annual general meeting** or adjourned annual general meeting, such **un-adopted 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 Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2023 and filing of financial statements with Registrar was done on 12th November, 2023 i.e. within 30 days of the date of adjourned AGM. But Sun Ltd. has not filed its un-adopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2023.

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

Question 28

Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is

in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.

Advise, how would Dhiman Limited deal with the consolidation of such financial statements.

Answer

According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its **subsidiary** or subsidiaries which have been **incorporated outside India** and which have **not** established their **place of business in India**.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is **not** required to get its financial statement **audited** under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such **unaudited financial statement** along with a declaration to this effect and where such financial statement is in a language other than English, along with a **translated copy of the financial statement in English**.

It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the **format** of accounts of foreign subsidiaries 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.

Hence, Dhiman Limited. would have to get the **standalone financial statements of Best Shoes Limited translated in English language and also get those aligned** as per the its accounting policies for the purpose of consolidation.

Further Dhiman Limited would need to **file such unaudited financial statement of Best Shoes Limited** along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan 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.

Re-opening of Accounts on Court's or Tribunal's Orders [Section 130]

Question 29

The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re- opening of accounts on court's or Tribunal's order.

Answer

According to section 130 of the Companies Act, 2013,

(1) **On Filing of an application:** 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 the **Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned** and an order is made by a **court** of competent jurisdiction **or the Tribunal** to the effect that- (i) the relevant earlier accounts were prepared in a **fraudulent** manner; or (ii) the affairs of the company were **mismanaged** during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give **notice** to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the **representations**, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

(2) **Nature of Revised Accounts:** The accounts so revised or re-cast shall be **final**.

(3) **Time Period:** No order shall be made in respect of re-opening of books of account relating to a period earlier than **eight financial years immediately preceding the current financial year**:

Provided that where a direction has been issued by the **Central Government** under the proviso to sub-section (5) of section 128 for keeping of books of account for a **period longer** than eight years, the books of account may be ordered to be re-opened within such longer period.

Question 30

A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 2015-16 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT.

Answer

Section 130(1) of the Companies Act, 2013 apply to Court/Tribunal for re-opening of accounts- A company shall **re-open its books of account and recast its financial statements**, on an application made by the **Central Government, or other competent authorities** as prescribed under section130 (1) of the Companies Act, 2013 to the NCLT to the effect that-

(i) the relevant earlier accounts were prepared in a **fraudulent** manner; or

(ii) the affairs of the company were **mismanaged** during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than **eight financial years immediately preceding the current financial year**.

In the given instance, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is **validly filed to NCLT**.

Question 31

The Income Tax Authorities in the current financial year 2023-24 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2012-13 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 2012-13. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer

As per section 130 of the Companies Act, 2013, 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 the **Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned** and an order is made by a **court** of competent jurisdiction **or the Tribunal** to the effect that:

(i) The relevant earlier accounts were prepared in a **fraudulent** manner; or

(ii) The affairs of the company were **mismanaged** during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than **eight financial years immediately preceding the current financial year**.

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 2012-2013 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. 2023-2024, **is invalid**.

Voluntary Revision of Financial Statements or Board's Report [Section 131]

Question 32

The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. In light of the Companies Act, 2013 elucidate.

(i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.

(ii) the voluntary revision of financial statements or board's report by the directors.

(iii) For how many preceding financial years the board of directors may revise the financial statements?

Answer

(i) According to section 130 of the Companies Act, 2013, a company shall not:

a. **re-open its books of account and**

b. **recast its financial statements,**

unless an application in this regard is made by:

a. the **Central Government**,

b. the **Income-tax authorities**,

c. the Securities and Exchange Board of India **(SEBI)**,

d. any other **statutory regulatory body or authority** or

e. any **person concerned**.

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

a. That the relevant earlier accounts were prepared in a **fraudulent** manner; or

b. The affairs of the company were **mismanaged** during the relevant period, casting a doubt on the reliability of financial statements.

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

(ii) According to section 131 of the Companies Act, 2013, if it appears to the **directors** of a company that:

a. the **financial statement** of the company does not comply with the provisions of section 129; or

b. the **report of the Board** does not comply with the provisions of section 134.

They may prepare revised financial statement or board's report in respect of **any of the three preceding financial years with the approval of Tribunal**.

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

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

Question 33

New Sales Pvt. Limited, a company engaged in the business of trading heavy-duty paper tapes used in industrial packaging, has seen consistent growth over the past five years. The company's turnover for the financial year 2024–25 crossed ₹ 130 crore, with a net profit of ₹ 9.2 crore.

During the same financial year, the company's long-serving Chief Financial Officer (CFO), Mr. Ram, retired in December 2024 due to prolonged health issues. Following his retirement, Mr. Shyam, a qualified Chartered Accountant with two decades of experience in financial reporting, was appointed as new CFO in March 2025.

Upon assuming his duties and reviewing the company's past financial records and statutory filings, Mr. Shyam noted certain material classification errors and omissions in the audited financial statements for the year 2021–22.

Concerned about the potential implications of these discrepancies, Mr. Shyam advised the Board of Directors of New Sales Pvt. Limited to revise the financial statements for FY 2021–22, even though the financial statements had already been adopted by the shareholders and filed with the Registrar of Companies (RoC).

With reference to the relevant provisions of the Companies Act, 2013, examine and advise whether New Sales Pvt. Limited is permitted to revise its financial statements for the financial year 2021–22.

or

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. Shyam has advised the Board of New Sales Pvt. 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** on an application made by the company in Form No. NCLT 1 within fourteen days of the decision taken by the Board.

Question 34

The directors of Element Ltd. want to voluntary revise Financial statements of company. They have approached you to state to them provisions of the Companies Act regarding voluntary revision of financial statements.

Answer

(1) Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the **directors** of a company that-

(a) the **financial statement** of the company; or

(b) the **report of the Board**,

do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of **any of the three preceding financial years** after obtaining **approval of the Tribunal** on an application made by the company in such form and manner as may be prescribed and a copy of the **order** passed by the Tribunal shall be **filed with the Registrar**:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the **representations**, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall **not be prepared or filed more than once in a financial year**:

Reason for revision to be disclosed: Provided also that the detailed **reasons** for revision of such financial statement or report shall also be **disclosed in the Board's report** in the relevant financial year in which such revision is being made.

(2) Limits of revisions: Where copies of the **previous** financial statement or report have been sent out to members or **delivered** to the Registrar or laid before the company in general meeting, the revisions must be confined to-

(a) the **correction** in respect of which the previous financial statement or report **do not comply** with the provisions of section 129 or section 134; and

(b) the making of any necessary **consequential alternation**.

(3) Framing of rules by the Central Government in relation to revised financial statement or director's report: The **Central Government** may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular-

(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(c) require the directors to take such steps as may be prescribed.

National Financial Reporting Authority (NFRA) [Section 132]

Question 35

Write down functions and duties of the National Financial Reporting Authority.

Answer

Functions and Duties of National Financial Reporting Authority [NFRA]

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

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

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

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

(a) Maintain **details of particulars of auditors** appointed in the companies and bodies corporate governed by NFRA;

(b) **Recommend** accounting standards and auditing standards for approval by the Central Government;

(c) Monitor and enforce **compliance with accounting standards and auditing standards**;

(d) Oversee the **quality of service** of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;

(e) Promote **awareness** in relation to the compliance of accounting standards and auditing standards;

(f) Co-operate with national and international **organisations** of independent audit regulators in establishing and **overseeing adherence to accounting standards and auditing standards**; and

(g) Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

Corporate Social Responsibility [Section 135]

Question 36

ABC Ltd is a company with a turnover of more than ₹ 1000 crore in each of the preceding three financial years and have 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 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.

Question 37

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.

Question 38

Explain the following in brief with reference to Companies Act 2013:

(i) National Financial Reporting Authority (NFRA)

(ii) Corporate Social Responsibility (CSR) Committee

Answer

(i) National Financial Reporting Authority (NFRA)

According to section 132 of the Companies Act, 2013, the **Central Government** may, by notification, **constitute the National Financial Reporting Authority (NFRA)** to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall-

(a) make **recommendations** to the Central Government on the formulation and laying down of

accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) monitor and enforce the **compliance with accounting standards and auditing standards** in such manner as may be prescribed;

(c) oversee the **quality of service** of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(ii) Corporate Social Responsibility (CSR)Committee:

According to section 135(1) of the Companies Act, 2013, every company having

(1) **net worth** of rupees 500 crore or more, or

(2) **turnover** of rupees 1000 crore or more or

(3) a **net profit** of rupees 5 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**.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

Duties of CSR Committee [Section 135(3)]:

The CSR Committee shall-

(a) formulate and recommend to the Board, a **CSR Policy** which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(b) recommend **amount** of expenditure to be incurred on the activities referred to in clause (a); and

(c) **monitor** the CSR Policy of the company from time to time.

Question 39

Compute the minimum amount that Modern Furniture Limited is required to spend on account of Corporate Social responsibility year 2022-2023. MFL was incorporated in August 2020. Net-profit made during the financial years 2020-2021 and 2021-2022 are ₹ 20 crore, and ₹ 38 crore respectively.

Answer

Amount of CSR Expenditure = Atleast 2% of the average net profits of the company made during the 3 immediately preceding financial years.

Where the company has not completed the period of 3 financial years since its incorporation, the company shall spend, in every financial year, atleast 2% of the average net profits of the company made during such immediately preceding financial years.

Average Net profit	= (₹ 20 + 38 crores)/2
	= ₹ 29 crores
Minimum CSR Expenditure	= 2% of ₹ 29 crores
	= **₹ 58 lakhs**

Question 40

Quick Money Limited attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ₹ 15 crore during each of the preceding five years. In this connection, the Board of Directors of the company needs your expert views on the following matters:

(i) What is the meaning of "impact assessment"?

(ii) Whether impact assessment is required to be taken by all the companies?

(iii) Who can conduct impact assessment?

Answer

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

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

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

Question 41

Mary Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.

Answer

In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year **at least 2 per cent of average net profits of the company made during the three immediately preceding financial years**, in pursuance of its CSR policy.

If the company spends an amount in **excess** of the requirements, such company may **set off** such excess amount **against the requirement to spend CSR for up to immediate succeeding three financial years** subject to the conditions that:

a. The excess amount available for **set off** shall not include the surplus arising out of the CSR activities.

b. The **board resolution** shall pass to that effect.

Question 42

Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2016-17.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR)

committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.

Answer

Corporate Social Responsibility Committee: According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having-

(1) **net worth** of rupees 500 crore or more, or

(2) **turnover** of rupees 1000 crore or more or

(3) a **net profit** of rupees 5 crore or more

during the immediately preceding financial year shall constitute a **Corporate Social Responsibility Committee** of the Board.

"Net worth" [Section 2(57)] means the aggregate value of paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

-turnover of Rera Ltd. is ₹ 100 crore,

-net profit of ₹ 3 crore and

-net worth of ₹ 253 crore (Net profit + securities premium -accumulated loss = 3 + 300 – 50 = 253 crore).

Hence, **RERA Ltd. is not fulfilling any criteria** prescribed for constitution of CSR committee. So, it is **not obligatory for Rera Ltd. to constitute CSR Committee**.

[**Note 1:** It can also by presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[**Note 2:** Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

Question 43

The balances extracted from the financial statement of ABC Limited are as below:

Sr.No.	Particulars	Balances as on 31.03.2020 as per Audited Financial Statement (₹ in crore)	Balances as on 30.09.2020 (Provisional ₹ in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21.

Answer

According to section 135(1) of the Companies Act, 2013, every company having **net worth** of rupees five hundred crore or more, or **turnover** of rupees one thousand crore or more or a **net profit** of rupees five crore or more **during the immediately preceding financial year** shall constitute a **Corporate Social Responsibility Committee** of the Board consisting of **three or more directors**, out of which at least one director shall be an **independent director**.

In the given question, the company does not fulfil any of the given criteria (net worth/turnover/net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, **ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21**.

Question 44

Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (₹ In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.

(ii) State the composition of the CSR committee unlisted company and a private company.

Answer

Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

(i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company 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**, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30 + 70 + 50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute **1 crore**, can be spent towards CSR in financial year 2017-2018.

(ii) Composition of CSR Committee: The CSR Committee shall be consisting of **3** or more **directors**, out of which at least one director shall be an **independent director**.

(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Question 45

SKIP Limited (the Company) was incorporated on 01.04.2019. 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)
2019-20	₹ 5.00 crore	₹ 3.75 crore
2020-21	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if required, taking into account relevant provisions of Companies Act, 2013.

Answer

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.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of SKIP Limited for the FY 2020-21 is ₹ 7 crore, hence, SKIP Limited is required to constitute a CSR committee during FY 2021-22 as the Net profit before tax for the FY exceeds ₹ 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (SKIP Limited was incorporated on 1.04.2019.)

   Average Net Profit since incorporation: (₹ 5 crore + ₹ 7 crore)/ 2 = ₹ 6 crore

   Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs

Question 46

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was ₹ 200 crore divided into 20 crore equity shares of ₹ 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures–

Particulars	Amount (₹) crore
Free reserves created out of profits	200

Securities Premium Account	70
Credit balance of Profit & Loss account	60
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during financial year 2022-23 was ₹ 700 crore and net profit calculated in accordance with section 198 of the Companies Act, 2013, with other adjustments as per CSR Rules was ₹ 4 crore.

The Board of Directors of the company consists of the following directors:

'CA. R.C Goel' as the Managing Director

'Rudra Mittal' and 'Pragya' as independent directors

'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors

Vineet, Chief Compliance Officer of company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013 , and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of the following members:

'CA. R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

(I) The CSR projects for the benefit of employees of the company and their families only.

(II) A contribution of ₹ 50,000 to a political party under provisions of section 182 of the Companies Act, 2013.

(III) A contribution to the PM CARES Fund during Covid pandemic.

(IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein answer the following questions:

(i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only ₹ 700 crore?

(ii) Advise the company, how many members are eligible to be part of Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

(iii) Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

Answer

(i) According to section 135 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**:

"Net worth" [As per section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Particulars	Amount (₹ in crore)
Paid up share capital	200
Free Reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Miscellaneous expenditure not written off	(20)
Net Worth	**510**

As the Net worth of the company is more than ₹ 510 crore (i.e more than ₹ 500 crore), hence the **company has attracted the provisions of section 135** of the Companies Act, 2013.

(ii) CSR Committee is constituted of CA. R. C. Goel (Managing Director), Varun (director), Prabodh (director) and Vineet (Chief Compliance Officer). The **composition of the committee is not in compliance** with section 135 of the Companies Act, 2013, as no independent director is the part of the committee. Further, **Chief Compliance Officer has also been included which is not the requirement of the Act**.

(iii)

List of activities	Whether the activities are in accordance with the provisions of the Act
(I) The CSR projects for the benefit of **employees** of the company and their family only	**No**
(II) A contribution of ₹ 50,000 to a **political party**	**No**
(II) Contribution to PM CARES Fund during Covid pandemic	Yes
(III) Local activities like promotion of child and women education	Yes

Internal Audit [Section 138]

Question 47

The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor.

Answer

The following class of companies shall be required to **appoint an internal auditor** which may be either an individual or a partnership firm or a body corporate, namely:

(1) every **listed** company;

(2) every **unlisted public** company having-

(A) **paid up share capital of 50 crore rupees** or more during the preceding financial year; or

(B) **turnover of 200 crore rupees** or more during the preceding financial year; or

(C) outstanding **loans or borrowings** from banks or public financial institutions exceeding **100 crore rupees** or more at any point of time during the preceding financial year; or

(D) **outstanding deposits of 25 crore rupees** or more at any point of time during the preceding financial year; and

Question 48

Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of ₹ 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020 -21. The management of company have approached you to advise them about appointment of internal auditor.

Advise them as per the provisions of the Companies Act, 2013.

Answer

According to section 138 read along with Rules of the Companies Act, 2013, 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.

In the given question, the company has a paid up capital of ₹ 45 crore and turnover of ₹ 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than ₹ 200 crore), hence, it is **required to appoint an internal auditor for the financial year 2020-21**.

Question 49

X Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2019 and turnover of ₹ 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

Answer

According to the provisions of Section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every **listed** company;

(2) every **unlisted public** company having-

- (A) **paid up share capital of 50 crore rupees** or more during the preceding financial year; or
- (B) **turnover of 200 crore rupees** or more during the preceding financial year;
- (C) outstanding **loans or borrowings** from banks or financial institutions exceeding **one hundred crore rupees** or more **at any point of time** during the preceding financial year; or
- (D) **outstanding deposits of twenty-five crore rupees** or more **at any point of time** during the preceding financial year.

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

Thus, **X limited (which is a listed company) is required to appoint an internal auditor**, irrespective of its

paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company).

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

Question 50

PQR Private Limited operates as a manufacturing company, generating a turnover of 150 crore and holds an outstanding loan of ₹ 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of ₹ 110 crore, but ₹ 35 crore were repaid during the same year). The company's Board has delegated the authority to 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 Secretary of the company Mr. A as an internal auditor?

Answer

1. 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.

   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**.

2. 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.

   Hence, the **Board of Directors may appoint Mr. A, the Secretary of the company as an internal auditor**.

Question 51

Natraj Limited is an unlisted Public company having paid up share capital of ₹ 80 crores during the preceding financial year 2016-17. The turnover of the company was ₹ 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, discuss the answer to the following:

(i) Is it mandatory for the above company to appoint an internal auditor for the financial year 2017-18?

(ii) What are the qualifications of the Internal Auditor?

Answer

(i) Class of companies required to appoint Internal Auditor: Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint

Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:

1. Every **listed** company;
2. Every **unlisted public** company having-
   (a) **Paid up share capital of 50 crore rupees** or more during the preceding financial year; or
   (b) **Turnover of 200 crore rupees** or more during the preceding financial year; or
   (c) Outstanding **loans or borrowings** from banks or public financial institutions exceeding **100 crore rupees** or more at any point of time during the preceding financial year; or
   (d) **Outstanding deposits of 25 crore rupees** or more at any point of time during the preceding financial year; and
3. 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.

As per the facts given in the question, Natraj Limited is an unlisted public company with the paid up share capital of ₹ 80 cores during the preceding financial year with the turnover of ₹ 110 crores. Since, Natraj Limited fulfills one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is **mandatory for the Natraj Limited to appoint an internal auditor for the financial year 2017-18**.

(ii) Qualifications of Internal Auditor

(a) 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.

Here, the term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an **employee** of the company.

CHAPTER - 10
Audit and Auditors

Eligibility, Qualifications and Disqualifications of Auditors [Section 141]

Question 1

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

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

Answer

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

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

Question 2

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 2023 in which he accepted the assignment. Subsequently, in January 2024, 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 Section 141(3), 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 3

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.?

or

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 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. Abhi is holding security of ₹ 1000 in the Abhiman Ltd, therefore, he is **not eligible for appointment as an auditor** of Abhiman Ltd.

Question 4

"BC & Co." is an audit firm having partners "Mr. B" and "Mr. C". "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).

Question 5

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September 2023. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of EF Limited on 15th October 2023. But Naresh & Company continues to function as statutory auditors of the company. Advice.

Answer

According to section 141(3)(d)(i) of the Companies Act, 2013, a **person** who, **or his relative or partner** holds any **security** of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person **cannot be appointed** as auditor of the company. Provided that the **relative** of such person may hold security or interest in the company of **face value not exceeding 1 lakh rupees** as prescribed under the Companies (Audit and Auditors) Rules, 2014.

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 15th October 2023 i.e. after the investment made by his wife in the equity shares of EF Limited.

Question 6

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) "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.

or

Mr. P is a practicing Chartered Accountant and Mr. Q, 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 auditor of ABC Ltd.?

(ii) 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.

(iii) 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

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is **disqualified** to be appointed as an auditor if **he, or his relative or partner** holding any **security of or interest** in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further 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. 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.

(ii) As per section 141(3)(d)(ii), 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 **rupees 5 Lakh**. 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.

(iii) As per section 141(3)(f), an auditor is **disqualified** to be appointed as an auditor if a person whose **relative is a director** or is in the employment of the company as a director **or a key managerial personnel**. In the instant case, since 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.

Question 7

Assess the eligibility of the following individual for appointment as Auditor in accordance with the regulations outlined in the Companies Act, 2013:

'Ms. Komal', the real sister of 'Mr. Sharad', a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of 'Mr. Sharad' as an auditor for the company.

Answer

As per section 141(3)(f), an auditor is **disqualified** to be appointed as an auditor if a person whose **relative is a director or** is in the employment of the company as a director or a **Key Managerial Personnel**. In the instant

case, since Ms. Komal, real sister of Mr. Sharad (Chartered Accountant) is the CFO (a KMP) of Biotech Limited, hence **Mr. Sharad will be disqualified to be appointed as an auditor in the said company**.

Question 8

Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹ 75,000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 1,50,000/- (market value ₹ 95,000/-)?

Answer

As per Section 141(3)(d)(i) of the Companies Act, 2013, a **person** 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, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a **relative** of an auditor may hold securities in the company of **face value not exceeding rupees one lakh**.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a **transaction is valid**.

Yes, the answer will be different in case where the face value of acquired shares is ₹ 1,50,000. Then in that case:

(i) **Corrective action** to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor **within 60 days** of such acquisition, **or**

(ii) Auditor has to **vacate** his office.

Question 9

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021-22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

(1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.

(2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh.

Answer

(1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is **disqualified** to be appointed as an auditor if he is an **officer or employee** of the company.

Hence, **Priyansh is disqualified** to be appointed as an auditor in Gizmo Limited.

(2) As per section 141(3)(d)(ii), 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 **rupees 5 Lacs**. In the instant case, **Vinod will be qualified to be appointed as an auditor** of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Question 10

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021-22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd:

(i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of ₹ 2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.

(ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of ₹ 99,000

(iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

Answer

(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person 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.

Hence, **Maninder is disqualified to be appointed as an auditor** in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)

(ii) As per section 141(3)(d)(ii) a person 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 ₹ 5 Lacs**.

Hence, **Dinesh is not disqualified** as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only ` 99,000.

(iii) As per section 141(3)(h), a person who has been **convicted by a court** of an offence involving fraud and a period of **10 years** has not elapsed from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.

Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, **Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.**

Question 11

Advise as per the provisions of the Companies Act, 2013, with regard to appointment of auditor:

Mr. Showik, a practising Chartered Accountant has business relationship with Primus Hotels Limited. The hotel used to provide services to Mr. Showik frequently, on the same price as charged from other customers. Whether Primus Hotels Limited can appoint Mr. Showik as its auditor?

Answer

Section 141(3) of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person or a firm who, whether directly or indirectly, has **business relationship** with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company, shall **not be eligible** for appointment as an auditor of a company.

The term **business relationship** shall be construed as any **transaction** entered into **for a commercial purpose except-**

- commercial transactions which are in the nature of **professional services** permitted to be rendered by an

auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;

- commercial transactions which are in the **ordinary course of business** of the company **at arm's length price** – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the given question, since the transaction is at arm's length price so **Mr. Showik can be appointed as an auditor of Primus Hotels Limited**.

Question 12

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹ 1,50,000.

(ii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

Answer

(i) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a **person** who, **or his relative or partner** who has given a **guarantee or** provided any **security** in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of **₹ 1 Lakh**. such person cannot be appointed as auditor of the company.

In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹ 1 Lakh i.e. of an amount worth ₹ 1,50,000. Therefore, **XYZ & Co. cannot be appointed as an auditor for P Limited**.

(ii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a **person** who, **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 **₹ 5 Lakh**, shall not be appointed as an auditor.

Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹ 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹ 5 Lakh, therefore **XYZ & Co. cannot be appointed as an auditor for P Limited**.

Question 13

"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.

i. Provide the maximum number of audits remaining in the name of "ABC & Co."

ii. 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

i. Mr. A can hold: 20 - 4 = 16 more audits.

ii. Mr. B can hold 20 - 6 = 14 more audits and

iii. Mr. C can hold 20 -10 = 10 more audits.

Question 14

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:

1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of ₹ 4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.
2. Mr. A's relative, Ms. C, has an outstanding debt of ₹ 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 **₹ 5 Lacs**.

In this scenario:

1. Mr. A's partner, Mr. B, has a debt of ₹ 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of ₹ 2 Lacs from DEF Ltd., an associate company of XYZ Ltd.

The **total indebtedness linked to Mr. A's partner and relative is ₹ 6 Lacs** (₹ 4 Lacs + ₹ 2 Lacs), which exceeds the ₹ 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.

Auditor not to Render Certain Services [Section 144]

Question 15

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

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are **approved by the Board of Directors or the audit committee**, as the case may be. But such services shall **not include designing and implementation of any financial information system**.

In the said instance, the Board of directors of 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 Auditors accept the assignment, following penal provisions as specified in **section 147** of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm

Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the **partner** or partners of the audit firm has or have acted in a **fraudulent** manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the **liability**, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the **partner** or partners concerned of the audit firm **and of the firm jointly and severally** and shall also be liable under section 447.

Provided that in case of **criminal liability** of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

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

Appointment of Auditors [Section 139]

Question 16

Unicorn Steel Private Limited is incorporated as on 02.06.2024, board of directors of the company held board

meeting as on 15.06.2024 to appoint Jain Ajmera & Associates as a first auditor of the company for a term of 5 years. As per section 139(6) of the Companies Act, 2013, the board shall appoint first director within 30 days from the date of registration of the company. Evaluate the legal validity:

Answer

Invalid. As per section 139(6), the first auditor so appoint by Board of Director shall hold office **until the conclusion of the first AGM**.

If the **Board fails to exercise its powers** i.e. appointment of first auditor, it shall

a. **Inform the members** of the company and

b. The company may appoint the first auditor **within 90 days** at an extra ordinary general meeting (EGM) and

c. Such auditor shall hold office till the **conclusion of the first AGM**.

Question 17

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.

Answer

According to section 139(6) of the Companies Act, 2013, the **first auditor** of a company, **other than a Government Company**, shall be appointed by the **Board of directors within 30 days** of the date of registration of the company and the auditor so appointed shall hold office **until the conclusion of the first AGM**.

If the Board fails to exercise its powers i.e. appointment of first auditor, it shall **inform the members** of the company and the company may appoint the first auditor **within 90 days at an extra ordinary general meeting** (EGM) and such auditor shall hold office **till the conclusion of the first AGM**.

Question 18

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**.

Question 19

Explain how the auditor will be appointed in the following cases:

The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017.

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 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 thirty 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 20

A company includes the following shareholders also:

(I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which **not less than 51%** of the paid-up share capital is held by the **Central Government, or by any State Government** or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

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

In the given case as the total shareholding of the three institutions adds up to 30% 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.

Question 21

Explain how the auditor will be appointed in the following cases:

(i) A Government company within the meaning of section 394 of the Companies Act, 2013.

(ii) A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Answer

(i) 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 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**.

(ii) 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:

(1) 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 sixth annual general meeting** and thereafter till the conclusion of every sixth meeting.

(2) 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 22

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.

(ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

Answer

(i) First auditor

(1) According to section 139(7) of the Companies Act, 2013, in the case of a **Government company** or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the **first auditor** shall be appointed by the **Comptroller and Auditor General of India (CAG) within 60 days** from the date of registration of the company.

(2) In case the **CAG does not appoint** first auditor within the said period, the **Board of Directors** of the company shall appoint such auditor **within the next 30 days**.

(3) Further, in the case of **failure of the Board** to appoint such auditor within the next 30 days, it shall **inform the members** of the company who shall appoint such auditor **within the 60 days at an Extraordinary General Meeting**, who shall hold office **till the conclusion of the first annual general meeting**.

XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy

According to section 139(8) of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the **CAG within 30 days**.

(2) In case the CAG does not fill the vacancy within the said period, the **Board of Directors** shall fill the vacancy **within next 30 days**.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The **Board** may fill any casual vacancy in the office of an auditor **within 30 days** but where such vacancy is caused by **resignation** of an auditor, such appointment shall also be **approved by the company at a general meeting** convened **within 3 months** of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office **until the conclusion of the next annual general meeting**.

Question 23

(i) Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor.

(ii) Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard?

or

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

(i) Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a **partner or in employment** of an **officer or employee** of the company will be **disqualified** to act as an auditor of a company. 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, he shall be **deemed to have vacated** his office as an auditor.

In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Surya Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be **deemed to have vacated office of the auditor of Surya Distributors Ltd**.

(ii) 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".

In the instant case, the **appointment of Mr. Aakash**, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in **violation** of section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

In view of the above, the **Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself**.

Question 24

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

Discuss in the light of the Companies Act, 2013:

(i) The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?

(ii) The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company?

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.

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

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

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

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

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

Question 25

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 30th April, 2024 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

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.

Therefore, the **contention of Mr. Sanjay is not tenable**. The **appointment is valid** under the Companies Act, 2013.

Question 26

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

2024 in which the Board of Directors recommended for appointment of Aashish as Statutory Auditors before the shareholders.

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

Based on the above facts answer the followings:

(i) Explain the procedure to fill up the casual vacancy of the office of Statutory Auditor.

(ii) Whether the contention raised by Keshav is justified as per the provisions of the Companies Act, 2013?

(iii) What shall be your answer, if the casual vacancy in the office of the Statutory Auditor in the company was caused by resignation of Sangeeta?

Answer

(i) Procedure to fill up the casual vacancy of the office of the Statutory Auditor

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

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

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

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

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

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

As per Section 139(8)(i) of the Act, where the **casual vacancy is caused by the resignation** of an auditor, such appointment shall also be **approved** by the company at a general meeting convened **within three months** of the recommendation of the Board and he shall hold the office **till the conclusion of the next annual general meeting**.

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

Question 27

Shiv Limited is incorporated on 3.10.2020. The company is having a paid-up share capital of Rs. 5 crores. Following are key shareholders of the company:

Name of the Party holding shares	Amount (in Rs.)
Central Government	1.50
Punjab Government	1.23
Others	2.27

The first auditor of the company has been appointed by the Board of Directors on 31.10.2020. The members of the company have objected to such an appointment by the Board of Directors. According to the members its only the members who can appoint the first auditor.

Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct.

Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

As per section 139(7), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the **first auditor** shall be appointed by the **Comptroller and Auditor-General of India within 60 days** from the date of registration of the company and in case the Comptroller and Auditor-General of India **does not appoint** such auditor within the said period, the **Board of Directors** of the company shall appoint such auditor **within the next 30 days**; and in the case of **failure of the Board** to appoint such auditor within the next 30 days, it shall inform the **members** of the company who shall appoint such auditor **within the 60 days at an extraordinary general meeting**, who shall hold office **till the conclusion of the first annual general meeting** .

In the given question, **Shiv Limited is a government company** as 54.6% [(1.5 + 1.23)/ 5 = 54.6%] of the share capital is held by Central government and State Government (Punjab Government). Thus, the first auditor of Shiv Limited shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration. Thus, the **appointment of first auditor by Board of Directors on 31.10.2020 is not valid**. The Board of Directors can appoint the first auditor in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period of period 60 days. The Board of Directors of the company shall appoint such auditor within the next 30 days.

In the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting. **Thus, the contention of members that its only the members who can appoint the first auditor of the Government company, is not correct.**

Question 28

Sohan Lal was appointed as the statutory auditor of RST Ltd., a non- government company at the Annual General Meeting held on 30th September, 2023. He has resigned after two months as he wanted to discontinue

the practice and surrendered his Certificate of Practice and joined a multinational company.

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

Answer

Filling Up Casual Vacancy [Section 139(8)]

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

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

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

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

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

Written and signed **consent and certificate** shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in Section 141 of the Act. The Company shall inform the auditor concerned of his or its appointment.

Compliances:

As per section 140(2) and (3) of the Act read with Rule 8 of Companies (Audit and Auditors) Rules, 2015, the resigning auditor shall file Form ADT-3 with the **company and the Registrar of Companies (ROC)** along with valid reasons **within 30 days** of the date of resignation.

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

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

(i) the individual or the firm, as the case may be, is **eligible for appointment and is not disqualified** for appointment under sections 139, 141, and other applicable provisions of the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(ii) A **written consent** to act as the auditor.

(iii) the proposed appointment is within the **limits** laid down by or under the authority of the Act;

(iv) The **list of proceedings** against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as **disclosed** in the certificate, is true and correct.

(v) The new auditor must communicate with the resigning auditor to ensure there are no professional or ethical concerns.

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

Term, Cooling Period, Rotation and Remuneration of Auditors [Section 139 and 142]

Question 29

(i) Rupa Limited, a listed company appointed M/s. VG &ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30.09.2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

(ii) PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

Answer

(i) **Tenure of Auditor:** Section 139(2) of the Companies Act, 2013, provides that **listed** companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

(1) an individual as auditor for more than **one term of five consecutive years**; and

(2) an audit firm as auditor for more than **two terms of five consecutive years**.

Cooling off Period:

(1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for **five years from the completion of his term**;

(2) An audit firm which has completed its term (i.e. 2 terms of 5 consecutive years) shall not be eligible for re-appointment as auditor in the same company for **5 years from completion of such term**.

In terms of the above provisions, Rupa Limited, which is a listed company, **can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years**, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it **can be re-appointed as auditor for one more term of five years**, i.e., upto the conclusion of the AGM to be held in 2027.

(ii) As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a **written consent** of the auditor to such appointment, and a **certificate** from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that–

(A) the individual or the firm, as the case may be, is **eligible** for appointment and is **not disqualified** for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(B) the proposed appointment is as per the **term** provided under the Act;

(C) the proposed appointment is within the **limits** laid down by or under the authority of the Act;

(D) the list of **proceedings** against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as **disclosed** in the certificate, is true and correct.

The certificate shall also indicate whether the auditor **satisfies the criteria provided in section 141**.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Question 30

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors as per the provisions of the Companies Act, 2013.

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.

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 HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

Question 31

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, **contention of Board of directors** that they can fix remuneration of auditor on their own is **not valid**.

Question 32

M/s Sharma & Associates is an audit firm with two partners, Mr. Sharma and Mr. Raj. Mr. Raj is also a partner in another audit firm, M/s Mehta & Associates. M/s Sharma & Associates was appointed as the statutory auditor for Bright Future Ltd. (listed company, on which provisions related to rotation of auditor apply) for two consecutive terms of 5 years each, from 2017 to 2027.

If Bright Future Ltd. now wants to appoint M/s Mehta & Associates as its audit firm, can it do so? If not, when will the restriction be lifted?

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.

Bright Future Ltd. cannot appoint M/s Mehta & Associates as its auditor immediately after the completion of M/s Sharma & Associates' tenure.

Since **Mr. Raj is a common partner in both firms**, regulatory provisions impose a cooling-off period of 5 years before either of these firms can be reappointed.

Therefore, **Bright Future Ltd. can appoint M/s Mehta & Associates or M/s Sharma & Associates only after the cooling-off period ends in the year 2032**.

Question 33

Mr. Govind Ram is a partner and in- charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20.05.22. In the general meeting of Kanha Limited held on 15.06.22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha 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-

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for **five years from the completion of his term**;

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

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

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

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a

partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & 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 Kanha Limited (listed company) for a period of 5 years**.

Question 34

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, 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 has certified the financial statements of Right Trading Limited, **retires** from M/s DEF and **joins** M/s XYZ, hence, the **appointment of M/s XYZ is not valid**.

Question 35

Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.

CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013:

(1) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?

(2) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?

(3) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?

(4) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?

Answer

According to Section 139 (2) of the Companies Act, 2013,

I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an **audit firm** as auditor for more than **two terms of 5 consecutive years**.

II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for **five years from the completion of such term**.

III. Further, 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 an auditor of the same company for a period of **five years**.

Applying the above provisions,

(1) Lemon & Company can continue as statutory auditors of M/s Big Limited for **4 more years** from 1.4.2014, i.e. they can continue in office only till 31.3.2018.

(2) The cooling- off period shall be of **5 years**.

(3) Dew & Company **cannot be appointed** as statutory auditor of M/s Big Limited during cooling–off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, **Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited)**, during the cooling – off period.

(4) As per Section 138 (1) of the Companies Act, 2013, every **listed** company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other **professional** (which may be either an individual or a partnership firm or a body corporate) **as may be decided by the Board** to conduct internal audit of the functions and activities of the company.

Accordingly, **M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary** M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

Question 36

CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1.04.2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company?

Answer

(1) As per section 139 of the Companies Act, 2013, company shall not appoint or re-appoint an individual as auditor for more than one term of five consecutive years and an audit firm as auditor for more than two terms of five consecutive years.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, **SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021**.

(2) Section 139(2) states 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**.

Hence, as per the above provision, **ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period** because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

Question 37

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/reappointment in the following cases:

(i) Appointment of Mr. Tel by the Board of Directors.

(ii) Re-appointment of Mr. Tel at the first AGM in the above situation.

(iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. ie., 4 years tenure.

Answer

As per section 139(6) of the Companies Act, 2013, the **first auditor** of a company, other than a Government company, shall be appointed by the **Board of Directors within thirty days** from the date of registration of the company and such auditor shall hold office **till the conclusion of the first annual general meeting**.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM **till the conclusion of its 6th AGM** and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than **one term of five consecutive years**.

As per the given provisions following are the answers:

(i) Appointment of Mr. Tel by the Board of Directors is **valid** as per the provisions of section 139(6).

(ii) **Appointment of Mr. Tel at the first Annual General Meeting is valid** due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

(iii) As per law, auditor appointed shall hold office from the conclusion of 1st AGM **till the conclusion of its 6th AGM i.e., for 5 years**. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his **appointment is not valid**.

Powers and Duties of Auditors and Auditing Standards [Section 143 and 146]

Question 38

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

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.

Question 39

What are the rights of the auditor of a company in respect of attending the General Meeting.

Answer

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

(i) All **notices** of, and other communications relating to, any general meeting shall be forwarded **to the auditor** of the company.

(ii) The auditor shall, unless otherwise exempted by the company, **attend** either by **himself** or through his **authorised representative**, who shall also be qualified to be an auditor, any general meeting.

(iii) The auditor shall have **right to be heard** at such meeting on any part of the business which **concerns him** as the auditor.

Reporting of Frauds by Auditors [Section 143]

Question 40

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 suspicious 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 deal 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**.

Auditor's Report [Section 143 and 145]

Question 41

State provisions of Companies Act, 2013 regarding signing of the Audit report by the Auditors of the company.

Answer

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

(i) 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 sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).

(ii) 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 42

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.

Question 43

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.

Removal, Resignation of Auditor and Giving of Special Notice [Section 139 and 140]

Question 44

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 2024, 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.

Question 45

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

Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place?

Answer

Removal of first auditor: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office **before the expiry** of his term by passing **special resolution** in general meeting, after obtaining the previous **approval of the Central Government** in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is **invalid**. The company contravened the provision of the Act.

Question 46

State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:

(i) 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.

(ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

Answer

(i) Section 139(6) of the Companies Act, 2013 lays down that 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 ninety days at an extraordinary**

general meeting appoint such auditor and such auditor shall **hold office till the conclusion of the first annual general meeting**.

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:

a. **Inform the members** of the Company;

b. Immediately take steps to convene an extra ordinary general meeting **not later than 90 days**;

c. Members shall at that extra ordinary meeting **appoint the first auditors** of the company;

d. The first auditors so appointed shall hold office **upto the conclusion of the first AGM** of the company.

(ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office **before the expiry** of his term only by a **special resolution** of the company, after obtaining the previous **approval** of the **Central Government** in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

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

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, 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 Central Government **within thirty days** of resolution passed by Board.

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

Question 47

Mr. Honest, an auditor of MM company ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner.

Answer

Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5) of the Companies Act, 2013]

(i) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the **Tribunal** either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a **fraudulent** manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, **direct the company to change its auditors**.

(ii) **Requirement for change of auditor:** If the application is made by the **Central Government** and the **Tribunal** is satisfied that any change of the auditor is required, it shall **within fifteen days** of receipt of such application, make an order that he **shall not function** as an auditor and the **Central Government may appoint** another auditor in his place.

Question 48

AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30.09.2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31.03.2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25.05.2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.

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.

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

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

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

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

Hence, in the instant case, the **decision of X Ltd. to remove AB & Associates**, auditors of the company at the general meeting held on 25.5.2020 subject to approval of Central Government **is not valid**. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Question 49

Members of World One Limited, holding more than 2% of the total voting power wants the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members can do so as per the provisions of the Companies Act, 2013.

Answer

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

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

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

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

Question 50

Abhiyogic Ltd. having 1,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.

Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.

In the context of aforesaid facts, please answer to the following question(s):

(a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?

(b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company?

Answer

(a) As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

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

The afore-mentioned notice shall be sent by members to the company not earlier than **3 months** but at

least **14 days** before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, **they were eligible to give such notice**.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting-21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said **notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd**.

(b) **As per Section 140(4) of the Companies Act, 2013:** Where notice is given of a resolution appointing as auditor a person **other than a retiring auditor** and the retiring auditor makes with respect thereto **representation** in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,-

(1) in any notice of the resolution given to members of the company, **state the fact** of the representation having been made; and

(2) **send a copy** of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is **not sent** as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be **read out at the meeting** such a copy of representation thereof shall be **filed with the Registrar**.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Punishment for Contravention [Section 147]

Question 51

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

Answer

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an **audit firm**, it is proved that the **partner** or partners of the audit firm has or have acted in a **fraudulent**

manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the **liability**, for such act shall be of the **partner** or partners concerned of the audit firm **and of the firm jointly and severally**.

Provided that in case of **criminal liability** of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, **'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine**.

With respect to **criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable**.

Central Government to specify audit of items of Cost for certain companies [Section 148]

Question 52

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.

CHAPTER - 11
Companies Incorporated Outside India

Foreign Company [Section 2(42), 379, 384 and 386]

Question 1

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.

Question 2

Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.

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.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term **"electronic mode"**, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(i) Business to business and business to consumer transactions, **data interchange** and other digital supply transactions;

(ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, **Teresa Ltd. will be treated as a foreign company** within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

Question 3

(i) In the light of Companies Act, 2013, discuss status of Gram Pte, 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 telemarketing business in India, its main server located outside India.

(ii) In continuance of (i) 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–

(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 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 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.

(i) 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.

(ii) 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

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

Explain whether ABC Inc. is required to comply with the provisions of chapter XXII of the Companies Act, 2013.

Answer

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

(a) has a **place of business in India** whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any **business activity** in India in any other manner.

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

Requirement of holding of paid-up share capital:

As per Section 379(2) of the Act, where **not less than 50%** of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:

(i) one or more **citizens of India**; or

(ii) by one or more **companies or bodies corporate incorporated in India**; or

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

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

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

Question 6

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

Sl. No.	Place of Incorporation	Registered	Additional information
1	Singapore	Singapore	Developed patient's database for a hospital in Mumbai, India, server in Singapore.
2	UAE	UAE	No place of business in India but employs agents in India and does not have any business activity in India.

3	Cape Town	Cape Town	Board Meeting held in Leh, India.
4	Germany	Germany	49% of the shares held by an Indian company.

Answer

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

So, as per the definition, we can conclude:

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

It is a **Foreign Company**.

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

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

It is **not a foreign company**.

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

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

It is **not a foreign company**.

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

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

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

Question 7

Beauty Cosmetics, a company incorporated in Korea has established its branch office in Chennai for conducting its business in India. The structure of paid-up share capital of Beauty Cosmetics as at 31st March 2024 is as below:

The company does not have any Preference Share Capital.

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

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

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

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

(i) Whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India, and

(ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company?

Answer

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

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

(a) a **place of business in India** whether by itself or through an agent physically or through electronic mode and

(b) conducts any **business activity** in India in any other manner.

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

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

(i) one or more **citizens of India**; or

(ii) by one or more **companies or bodies corporate incorporated in India**; or

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

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

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

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

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

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

Documents, etc., to be Delivered to Registrar by Foreign Company [Section 380 & 383]

Question 8

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.

Question 9

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 10

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, answer 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) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within **30 days** of the establishment of place of business in India, deliver to the **Registrar for registration** the following documents:

(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 instruments are 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;

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:

(1) personal **name** and surname in full;

(2) any former name or names and surname or surnames in full;

(3) father's name or mother's name or spouse's name;

(4) date of birth;

(5) residential **address**;

(6) **nationality**;

(7) if the present nationality is not the nationality of origin, his nationality of origin;

(8) 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)

(9) income-tax permanent account number (**PAN**), if applicable;

(10) occupation, if any;

(11) 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);

(12) other directorship or directorships held by him;

(13) **Membership Number** (for Secretary only); and

(14) e-mail ID.

(d) 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;

(e) the full address of the **office of the company in India** which is deemed to be its principal place of business in India;

(f) particulars of **opening and closing of place of business in India** on earlier occasion or occasions;

(g) **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

(h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar for **registration** shall be delivered to the **Registrar, Central Registration Centre**.

Question 11

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, 2024, 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

Section 380 (3) provides that where any **alteration** is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, **within 30 days of such alteration, deliver to the Registrar** for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to **submit the full address of the new registered or principal office of the company by March 30, 2024**.

Accounts of Foreign Company [Section 381]

Question 12

Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with financial statements by foreign company.

or

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.

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

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

(a) Further, every foreign company shall, **along with the financial statement** required to be filed with the Registrar, **attach** thereto the following documents; namely:

(1) Statement of **related party transaction**

(2) Statement of **repatriation of profits**

(3) 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.

(b) 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 13

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.

Provisions as to Expert's Consent and Allotment [Section 388]

Question 14

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,

(i) **No person shall issue**, circulate or distribute in India any **prospectus** offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India-

  (a) if, where the prospectus includes a statement purporting to be made by an **expert**, he has **not given**, or has before delivery of the prospectus for registration **withdrawn**, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does **not appear in the prospectus** a statement that he has given and has not withdrawn his consent as aforesaid; or

  (b) if the prospectus **does not** have the effect, where an application is made in pursuance thereof, of rendering all persons concerned **bound** by all the provisions of **section 33** (Issue of application forms for securities) and **section 40** (Securities to be dealt with in stock exchanges), so far as applicable.

(ii) For the purposes of this section, a statement shall be **deemed to be included** in a prospectus, if it is contained in any report or memorandum appearing on the **face** thereof or by **reference** incorporated therein or issued therewith.

Registration of Prospectus [Section 389]

Question 15

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

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 Abroad Ltd. a foreign company shall proceed with the **issue of prospectus in compliance with the above stated provisions of section 389** of the Act.

Question 16

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

Answer

According to section 389 of the Companies Act, 2013:

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

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

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

(1) any **consent** to the issue of the prospectus required from any person as an **expert**;

(2) a copy of **contracts for appointment** of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(3) a copy of any other **material contracts**, not entered in the ordinary course of business, but entered within preceding 2 years;

(4) a copy of **underwriting agreement**; and

(5) a copy of **power of attorney**, if prospectus is signed through duly authorized agent of directors.

Company's Failure to Comply with Provisions of this chapter [Section 392 and 393]

Question 17

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

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

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

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

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

Question 18

(i) 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.

(ii) 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

(i) 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 for **registration** shall be delivered to the **Registrar, Central Registration Centre**.

(ii) 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**.

CHAPTER - 12
The Limited Liability Partnership Act 2008

Partners and Designated Partners [Section 5 to 10 and 22]

Question 1

Define the term 'Body Corporate' as per the provisions of the Limited Liability Partnership Act, 2008.

Answer

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

(i) a **LLP** registered under the Limited Liability Partnership Act, 2008;

(ii) a **LLP** incorporated outside India; and

(iii) a **company** incorporated outside India,

but **does not include**-

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a limited liability partnership as defined in the Limited Liability Partnership Act, 2008), which the **Central Government** may, by notification in the Official Gazette, specify in this behalf.

Question 2

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

Section 5 of Limited Liability Partnership Act, 2008 provides any **individual or body corporate** may be a partner in an 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**.

Further, Section (2)(1)(d) provides that a **Body Corporate** it means a **company** as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes-

(i) an **LLP** registered under this Act;

(ii) an **LLP** incorporated outside India; and

(iii) a company incorporated outside India,

but does **not include**-

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any **other body corporate** (not being a company as defined in '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.

Therefore, **HUF is not covered** in the definition of body corporate and **cannot be partner in LLP**.

Question 3

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

According to Section 7 of LLP Act, 2008 every LLP shall have **at least two 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 **one hundred twenty days** during the financial year. Hence, in the given problem, appointment of Mr. Rahul and Mr. Raheem as designated partners is **valid**.

Question 4

Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ₹ 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

Answer

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

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

Question 5

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.

Name of LLP [Section 15 to 17]

Question 6

Ravi and Neha, two entrepreneurs, plan to start a new Limited Liability Partnership (LLP) focused on AI-based software development. They decide to name their LLP as "NextGen AI Innovations LLP." Before proceeding with the incorporation, they want to ensure that their chosen name is available and reserved. They apply to the Registrar through the prescribed web-based platform and pay the required fee for name reservation.

Describe the legal requirements as to the reservation of a name as per relevant provisions under the Limited Liability Partnership Act, 2008.

Answer

Under section 16 of the Limited Liability Partnership (LLP) Act, 2008, a person may apply to the **Registrar** for the **reservation of a name** in either of the following circumstances:

(a) As the name of a proposed LLP, or

(b) As the name to which an existing LLP proposes to change its name.

The application must be made in the prescribed form and manner along with the prescribed fee.

Upon receiving such an application, the Registrar may, if satisfied that the name is not one liable to be rejected under section 15(2) of the LLP Act, reserve the name for a period of **three months from the date of intimation** by the Registrar.

As per section 15(2), **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.

Question 7

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 which 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

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 trade mark** of any other person under the Trade Marks Act, 1999'.

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

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

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

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

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

Question 8

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:

(i) When the name of LLP is identical.

(ii) 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 (b) 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 trademarks 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**.

Extent and Limitation of Liability of LLP and Partner [Section 26 to 30]

Question 9

"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 10

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

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. 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.

Financial Year Definition [section 2(1)(l)]

Question 11

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 LLP, means 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**.

Partner's Transferable Interest [Section 24 and 42]

Question 12

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

Whether X has any remedy against the denial?

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

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

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

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

Question 13

Sun Roofings LLP has 6 partners. Mr. K, a partner is in-charge for the marketing division of the firm. He is literally the face of the firm and due to his acumen the business was doing very well. Mr. W is one of the senior most partner and a major investor in the firm. Mr. K met with a sudden demise. The LLP however continued its operations without dissolving the LLP. The firm incurred huge losses after his death and Mr. K's share in the firm was also utilised to repay the debts.

Mr. W transferred his share to his son M who has previous experience in marketing. M wanted to take active part in the business but the remaining partners did not allow him. Referring to the provisions of the Limited Liability Partnership Act, 2008 state whether;

(i) Mr. K's share can be used to repay the firm's debts after his death

(ii) The remaining partners of Sun Roofings can forbid M to take part in the business.

Answer

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

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

(ii) As per Section 42 of the Limited Liability Partnership Act, 2008,

(1) The **rights** of a partner to a share of the **profits and losses** of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are **transferable** either wholly or in part.

(2) The transfer of any right by any partner pursuant to sub-section (1) **does not** by itself cause the **disassociation** of the partner or a **dissolution** and winding up of the limited liability partnership.

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

In the instant case, Mr. W can transfer his share in the limited liability partnership to his son, however, transfer of share does not, by itself, entitle M to participate in the management or conduct of the activities of the firm. Hence, the **remaining partners of Sun Roofings LLP can forbid M to take part in the business**.

Cessation of partnership interest [Section 24]

Question 14

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

According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the **former partner** is to be regarded (in relation to any person dealing with the LLP) as still being a **partner** of the LLP unless-

(a) the **person has notice** that the former partner has ceased to be a partner of the LLP; or

(b) **notice** that the former partner has ceased to be a partner of the LLP has been **delivered to the Registrar**.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be **liable for the loss of firm** of the transactions entered after 01.11.2022.

Registration of changes in partners [Section 25]

Question 15

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 LLP about default on part of LLP about the non-compliance in respect to not informing the ROC about:

(i) Priya's address change

(ii) Ramesh's admission as a partner.

Answer

According to section 25 of the Limited Liability Partnership Act, 2008,

(1) Every partner shall **inform the LLP of any change** in his name or address within a period of **15 days** of such change.

(2) A LLP shall-

  (a) 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

  (b) 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.

(3) A notice filed with the Registrar under sub-section (2)-

  (a) shall be in such form and accompanied by such fees as may be prescribed;

  (b) shall be signed by the **designated partner** of the LLP and authenticated in a manner as may be prescribed; and

  (c) 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.

(i) **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 change of Priya's 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.

(ii) **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**.

Small Limited Liability Partnerships [Section 2(1)(ta)]

Question 16

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:

(i) the **contribution** of which, does not exceed **25 lakh rupees** or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and

(ii) the **turnover** of which, as per the Statement of Accounts and Solvency for the **immediately preceding**

financial year, does not exceed **40 lakh rupees** or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be **prescribed**, and fulfils such terms and conditions as may be **prescribed**.

Question 17

JEET LLP is a small scale consulting firm. For the financial year 2024-25, the firm reported a total contribution of ₹ 20 lakh and an annual turnover of ₹ 35 lakh as per its Statement of Accounts and Solvency. The LLP intends to avail benefits granted to small LLPs under the Limited Liability Partnership Act, 2008.

(a) Based on the given financial details, determine whether JEET LLP qualifies as a "Small LLP".

(b) If JEET LLP plans to expand its business and projects and resulting turnover exceeding ₹ 50 crore in the next financial year, determine the legal position as to the nature of the LLP as a "Small LLP".

Answer

(a) According to section 2(1)(ta) of the LLP Act, 2008, a LLP is classified as a "Small LLP" if:

(i) Its **contribution** does not exceed **₹ 25 lakh** (or a higher prescribed amount, up to ₹ 5 crore). Here, contribution of JEET LLP is ₹ 20 lakh, which is within the limit.

(ii) Its **turnover** does not exceed **₹ 40 lakh** (or a higher prescribed amount, up to ₹ 50 crore). Here turnover of JEET LLP is ₹ 35 lakh, which is within the limit.)

Since JEET LLP meets both conditions, it **qualifies as a "Small LLP"** under the Act.

(b) If JEET LLP's turnover exceeds ₹ 50 crore in next financial year, it will no longer meet the requirements as a Small LLP and will be subject to full compliance requirements applicable to regular LLPs.

Winding Up and Dissolution [Section 63 to 65]

Question 18

Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

Answer

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

A LLP may be wound up **by the Tribunal**:

(1) if the **LLP decides** that LLP be wound up by the Tribunal;

(2) if, for a period of **more than six months**, the number of partners of the LLP is **reduced below two**;

(3) if the LLP has acted **against** the interests of the **sovereignty and integrity of India, the security of the State or public order**;

(4) if the LLP has made a **default in filing with the Registrar** the **Statement of Account and Solvency or annual return** for any **five consecutive financial years**; or

(5) if the Tribunal is of the opinion that it is **just and equitable** that the LLP be wound up.

Question 19

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 20

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

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

Whistle blowing [Section 31] and Penalty for False Statement [Section 37]

Question 21

(i) Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008.

(ii) Describe the consequences of making a false statement in any return, statement or other document under section 37 of the Limited Liability Partnership Act, 2008.

Answer

(i) According to section 31 of the Limited Liability Partnership Act, 2008,

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

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

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

(ii) According to section 37 of the Limited Liability Partnership Act, 2008, If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a **statement**:

(a) which is **false** in any material particular, knowing it to be false; or

(b) which **omits** any material fact knowing it to be material,

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

Question 22

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

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

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

Considering the provisions of Limited Liability Partnership Act, 2008:

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

(ii) Can the LLP suspend Mr. J from service for commission of the act, of revealing the name of the other accused involved in the fraud?

Answer

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

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

- such partner or employee of an LLP has provided useful **information during investigation** of such LLP;

  Or

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

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

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

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

(ii) Can the LLP suspend Mr. J?

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

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

Difference between LLP and Limited Liability Company

Question 23

Write down any five points on the distinction between LLP and Limited Liability Company.

Answer

Distinction Between LLP and Company

	Basis	LLP	Company
1.	Regulating Act	The LLP Act, 2008	The Companies Act, 2013
2.	Members/Partners	The persons who contribute to LLP are known as **partners** of the LLP	The persons who invest the money in the shares of the company are known as **members** of the company
3.	Name	Name of the LLP to contain the word "Limited Liability Partnership" or "LLP" as suffix	Name of the public company to contain the word "Limited" and Pvt. Co. to contain the word "Private Limited" as suffix
4.	No. of members/partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees	**Private company:** Minimum – 2 members Maximum 200 members **Public company:** Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals
5.	Liability of members/partners	Liability of each partner is limited to the extent of **agreed Contribution** except in case of intention is fraud	Liability of a member is limited to the **amount unpaid** on the shares held by them
6.	Management	The business of the firm is managed by the partners including the designated partners authorized in the agreement	The affairs of the company are managed by board of directors elected by the shareholders
7.	Minimum number of directors/ designated partners	Minimum 2 designated partners	Pvt. Co. – 2 directors Public co. – 3 directors

CHAPTER - 13
The General Clauses Act, 1897

Definitions [Section 3]

Question 1

Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Answer

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

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

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

Question 2

Give the definition of "Rule" as per the General Clauses Act, 1897:

Answer

Rule: As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

Question 3

Elucidate the term "Commencement" as per the General Clauses Act, 1897.

Answer

Section 3(13) of the General Clauses Act, 1897, defines the term "Commencement".

"Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation **comes into force**.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai -AIR1970 sc 398).

Question 4

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 5

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

Answer

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

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

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

Question 6

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 7

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

'Things attached to the earth' have been held to be immovable property.

Answer

'Things attached to the earth' have been held to be immovable property: This statement is **valid**.

As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

(1) **Land**,

(2) **Benefits** to arise out of land, and

(3) Things **attached** to the earth, or

(4) **Permanently fastened** to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the **given statement is correct**.

Question 8

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:

(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.

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 9

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

"Immovable Property" [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.

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.

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 10

Explain the following with reference to the provisions of the General Clauses Act, 1897:

(i) Person

(ii) Document

Answer

(i) Person

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

(ii) Document

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

Question 11

Define the term 'person' as per the General Clauses Act, 1897. Discuss which of the following will be treated as a person:

(i) An idol

(ii) A public body

(iii) A company

Answer

Definition of the term "Person"

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

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

From the above definition, we can conclude:

(i) **An Idol:** An idol is a juristic person. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an **idol is a person**.

(ii) **A Public Body:** A public body to be a person need not always be set- up by the statute. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and is **treated as a "person."**

(iii) **A Company:** The definition of person includes a company. Thus, a **company is a person**.

Question 12

What is a Document as per the Indian Evidence Act, 1872?

Answer

As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. As per Section 3 of the Indian Evidence Act, 1872, 'document' means any **matter** expressed or described upon any **substance** by means of letters, figures or marks or by more than one of those means, **intended** to be used, or which may be used, **for the purpose of recording** that matter.

For Example: A writing is a document, any words printed, photographed are documents.

Question 13

State what do you understand by the term 'document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as a document:

(i) Power of Attorney

(ii) Cheque

Answer

According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include:

- any **matter** written, expressed or described upon any **substance**;
- by **means** of letters, figures or marks or by more than one of those means;
- which is **intended** to be used or which may be used, for the purpose or **recording that matter**.

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

(i) **Power of Attorney**

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

(ii) **Cheque**

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

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

Question 14

Explain the following with reference to the provisions of the General Clauses Act, 1897:

(i) Movable Property

(ii) Oath

Answer

(i) Movable Property

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

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

(ii) Oath

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

Question 15

Define the term "Affidavit" under the General Clauses Act, 1897.

Answer

"Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include **affirmation and declaration** in the case of persons by law allowed to affirm or declare instead of **swearing**.

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is **inclusive** in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for **use as evidence** in Court or before any authority.

Question 16

What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

Answer

"Official Gazette" [Section 3(39) of the General Clauses Act, 1897]: 'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of **India**, or

(ii) The Official Gazette of a **state**.

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

Question 17

Mr. N is caught stealing a bicycle, an offense punishable under the Indian Penal Code. According to Section 379 of the IPC, the punishment for theft was charged against him. Elaborate how the term "imprisonment" levied under the General Clauses Act, 1897, can be applied in line with the relevant law specified in the IPC?

Answer

According to section 3(27) of the General Clauses Act, 1897 states that 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code. By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, **rigorous**, that is with hard labor **and simple**. So, when an Act provides that an offence is punishable with imprisonment, the **Court** may, in its discretion, make the imprisonment rigorous or simple.

In this case:

If the court considers Mr. N's offense as a **minor theft** and believes it does not warrant harsh punishment, it might sentence him to **simple imprisonment**.

However, if the **theft involved force**, was committed in a violent manner, **or** if Mr. N has a **history of criminal behavior**, the court may decide to impose **rigorous imprisonment**.

Question 18

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 19

"The act done negligently shall be deemed to be done in good faith."

Comment with the help of the provisions of the General Clauses Act, 1897

Answer

Good Faith

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

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

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

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

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

Coming into operation of enactment [Section 5]

Question 20

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

(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.

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.

Question 21

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 answer 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.**

Repeal Provisions [Section 6 to Section 8]

Question 22

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 as per provisions of General Clauses Act, 1897.

Answer

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 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 23

'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 24

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Answer

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, **repeals and re-enacts**, with or without modification, any provision of a former enactment, then **references** in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as **references to the provision so re-enacted**.

Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, **provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956**.

General Construction Provisions [Section 9 to Section 13]

Question 25

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 26

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

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"**.

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 27

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:

(i) The dates during which Komal Ltd. is required to pay the dividend?

(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

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"**.

(i) 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).

(ii) 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)**. 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 28

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

Answer

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

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

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

Question 29

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**.

Question 30

(i) Mrs. K went to a Jewellary shop to purchase diamond ornaments. The owners of jewellary shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?

(ii) There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897?

Answer

(i) In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellary Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per 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 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 **Indian Contract Act, 1872** 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.

(ii) **"Measurement of Distances"** [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**.

Question 31

State the provisions of the General Clauses Act, 1897 relating to 'gender and number'.

Answer

Gender and number

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

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

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

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in section 125(1)(d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

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

Question 32

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 33

Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.

Answer

As per section 2(87) of the Companies Act, 2013, **Subsidiary company**, in relation to any other company (that is to say the holding company), means a company in which the holding company-

(i) controls the **composition of the Board** of Directors; or

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

Taking into account the above provision, **X Limited, Y Limited and Z Limited are the subsidiary companies of Moon Pharma Limited**.

Regarding the question, Mr. Avinash who is a Whole Time Director (KMP) in Moon Pharma Limited, wants to get appointed as Whole Time Director in X Limited and Y Limited.

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.

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.

Hence, **Mr. Avinash can hold office of Whole Time Director also in X Limited and Y Limited**.

Question 34

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

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

Answer

Provisions under the Companies Act, 2013

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

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

Provisions under the General Clauses Act, 1897

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

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

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

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

Question 35

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

Answer

By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the **masculine gender shall be taken to include females**.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, **Mrs. Neelu Chandra is bound to comply by section 166** of the Companies Act, 2013.

Question 36

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

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

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

Answer

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

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

(ii) **The word 'bullocks' could be interpreted to include 'cows':** This statement is **not valid**. Where a **word** connoting a **common gender** is available but the **word used conveys a specific gender**, there is a presumption that the provisions of General Clauses Act, 1897 **do not apply**. Thus, the word **'bullocks' could not be interpreted to include 'cows'**.

Question 37

Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example.

Answer

"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**.

Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

Question 38

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**.

Power and Functionaries [Section 14 to Section 19]

Question 39

(i) The Board of Directors of Cool Private Limited, through a resolution passed in the board meeting, granted authorization to Mr. Sharad, the CEO of the company to appoint two employees for the procurement department. Subsequently, Mr. Sharad selected Mr. Suresh and Mr. Hemant for the positions. However, after one month, Mr. Sharad, noticing unsatisfactory performance and lack of honesty in their duties, issued dismissal orders for both employees, citing proper reasons. Mr. Suresh contested his dismissal in the court, arguing that the Board had only empowered Mr. Sharad for appointments and not for dismissals and hence the dismissal order is invalid.

Assess the validity of Mr. Suresh's argument under the provisions of the General Clauses Act, 1897.

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

Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid.

Answer

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

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

(ii) As per the section 9 of the General Clauses Act, 1897, in case any legislation or Regulation, it shall be sufficient, for the purpose of **excluding the first** in a series of **days** or any other period of time, to use the word **"from"**, and, for the purpose of **including the last** in a series of **days** or any other period of time, to use the word **"to"**.

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

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

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

Question 40

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 41

Dream Builders Limited was engaged in the activity of building and selling budget friendly apartments. It recently started a new project at Noida. Pending approval, the builders started the construction work. On verification of documents, the Corporation of Noida refused to sanction the permission and the Assistant Commissioner Mr. S issued a demolition order, signed by him under his authority.

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

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

Referring to the provisions of the General Clauses Act, 1897, determine the validity of the claim of the builders.

Answer

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

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

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

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

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

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

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

Provision as to Orders, Rules etc. made under Enactments [Section 20 to Section 24]

Question 42

What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment. Explain as per the provisions of the General Clauses Act, 1897.

Answer

"Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22]: Where, by any Central **Act or Regulation** which is not to come into force immediately, on the passing thereof, a **power** is conferred **to make rules or bye-laws, or to issue orders** with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but **rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation**.

Question 43

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 44

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be questioned?

(iii) Is MCA entitled to make suitable changes in the draft?

(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

Answer

The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:

(i) **Yes**, MCA is required to **publish a draft** of the proposed Rules for the **information** of persons likely to be **affected** thereby.

(ii) **No**, in case of any irregularities in the publication of the draft, it **cannot be questioned**. The **publication** in the Official Gazette of a rule or bye-law after previous publication, shall be **conclusive proof** that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

(iii) **Yes**, MCA is entitled to make suitable **changes in the draft** before finally publishing them.

(iv) **No**, it is **not necessary to re-publish** the Rules in the amended form when the changes made are **ancillary** to the earlier draft.

Miscellaneous [Section 25 to Section 30]

Question 45

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 46

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

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**.

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 47

Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise.

Answer

As per section 27 of the General Clause 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.

Thus, where a notice is sent by 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**.

Hence, in the given situation, a notice was rightfully **served to Mr. Wise**.

Question 48

A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation.

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:

(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.

Hence, where the where the notice **could not be served** on account of the fact that the house of Mr P was found locked, it will be deemed that the **notice was properly served** as per the provisions of Section 27 of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non-service.

Question 49

Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas.

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:

(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.

The facts of the question are similar to a decided case law, wherein it was held that 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**. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

Question 50

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:

(i) properly **addressing**

(ii) **pre-paying**, and

(iii) posting by **registered post**.

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

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

Question 51

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

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:

(i) Properly **addressing**

(ii) **Pre-paying**, and

(iii) Posting by **registered post**.

Case Laws

(i) In **Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69,** it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) **In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604,** it was held that where a notice is sent by 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 other words, **Endorsement 'not claimed/not met'** is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non-receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the **notice served by Mr. A is tenable** provided one-month prior notice given to Mr. B.

Question 52

"No person shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of the General Clauses Act, 1897.

Answer

Provision as to offence punishable under two or more enactments

As per 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**.

Even Article 20(2) of the Constitution states that **no person** shall be prosecuted and punished for the **same offence more than once**.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the **subject of prosecution is the same**, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are **distinct** and not identical, **none** of these provisions will **apply**.

Question 53

Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

Answer

"Provision as to offence punishable under two or more enactments" [Section 26]: Where an act or omission constitutes **offence under two or more enactments**, then 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. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall **not be punished twice for the same offence**.

Question 54

(i) In a contract of sale, Mr. A fraudulently sold certain unmarketable goods to Mr. B. Now Mr. A is liable for fraudulent activity under both Indian Contract Act, 1872 and Sale of Goods Act, 1930. State the provision as per the General Clauses Act, 1897 as to whether his offence is punishable under the both the Acts?

(ii) Mr. P bought a car from Mr. G who was his friend. Mr. P did not check the car or test drive it. Whether the purchase made could be said to be made in good faith? Explain with reference to the provisions of the General Clauses Act, 1897.

Answer

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

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

Thus, Mr. A who is liable for the fraudulent activity under both the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, will be prosecuted and punished under either or both the enactments but shall **not be liable to be punished twice for the same offence**.

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

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

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

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

CHAPTER - 14
Interpretation of Statutes

Introduction

Question 1

How will you interpret the term "Instrument" used in a statutes?

Answer

'Instrument': In common parlance, 'instrument' means a formal **legal document** which creates or confirms a **right or records a fact**. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating **liability or as affording evidence** of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Interpretation and Construction

Question 2

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.

Classification of Interpretation

Question 3

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 4

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:

(i) 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.

(ii) 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.

Primary Rules of Interpretation/Construction

Question 5

Explain how does 'natural and grammatical meaning' helps in the interpretation of a statute?

Answer

Natural and grammatical meaning: Statute are to be first understood in their **natural, ordinary, or popular sense** and must be construed according to their **plain, literal and grammatical meaning**. If there is an

inconsistency with any express intention or declared purpose of the statute, or it involves any **absurdity, repugnancy, inconsistency**, the grammatical sense must then be **modified, extended or** abridged only to avoid such an inconvenience, but no further. [(State of HP v. Pawan Kumar (2005)]

Example: In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter the Supreme Court held that **betel leaves** could not be given the dictionary, technical or botanical meaning when the **ordinary and natural meaning is clear and unambiguous**. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. (Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325).

Question 6

Explain the rule which suggests that the 'Plain word requires no explanation' and 'Technical words be understood in technical sense only'.

Answer

Rule that suggests 'Plain Word requires no explanation'

This Rule is called "Rule of Literal Construction".

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

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

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

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

Technical words are to be understood in a Technical sense only

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

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

Question 7

Explain the Latin term "Absoluta sententia expositore non indiget" and how would the same help in correctly interpreting a definition given in a legislation or statute?

Answer

"Absoluta Sententia Expositore Non Indiget"

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

It is a cardinal rule of construction that a statute must be **construed literally and grammatically** giving the words their **ordinary and natural meaning**. Therefore, the language used in the statute must be construed in its grammatical sense. The correct course is to take the words themselves and arrive if possible, at their meaning without reference to cases, in the first instance. If the phraseology of a statute is **clear and unambiguous** and capable of one and only one interpretation, then it would not be correct to extrapolate these words out of their natural and ordinary sense. When the language of a statute is plain and unambiguous it is **not open to the courts to adopt any other hypothetical construction** simply with a view to carrying out the supposed intention of the legislature.

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

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

Question 8

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

Answer

Rule of Literal Construction

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

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

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

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

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

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

Question 9

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 10

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

Answer

Without prejudice

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the **particular provisions would not restrict or limit the operation and generality of the preceding general provisions**. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains……"

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Question 11

Briefly explain meaning and application of rule of "Harmonious Construction" in the interpretation of statutes?

Answer

Meaning of rule Harmonious Construction: When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they **harmonise** with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which **cannot be reconciled** with each other, they should be so interpreted, wherever possible, as to **give effect to all of them**. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is **passed as a whole** and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, **not overriding** it.

Application of the Rule: The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent **conflict between the provisions** of an Act, and one of them has not been made subject to the other. When after having construed their **context** the words are capable of only a **single meaning**, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

Question 12

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, non-obstante clause plays **crucial role in legal drafting** by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty & consistency in judicial interpretation.

Question 13

A clause that begins with the words 'notwithstanding anything contained' is a clause, that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.

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 Vs. Pakari Lakshman AIR 1965 AP 220)

A notwithstanding clause can operate at four levels.

S.No.	Clause	Effect
1.	Notwithstanding anything contained in another section or sub-section of that statute.	The clause will **override such other section(s)/sub-section (s)**
2.	Notwithstanding anything contained in a statute.	The clause will **override the entire enactment**.
3.	Not with standing anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will **prevail over the other enactment**.
4.	Notwithstanding anything contained in any other law for the time being in force.	The clause will **override all other laws**.

Question 14

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 15

What is meant by beneficial construction in statutory interpretation? Under what circumstances the rule of beneficial construction is generally applied?

Answer

Beneficial construction is not a strict rule of interpretation but rather a method used to interpret a statute liberally in order to give effect to the declared intention of the legislature, particularly when the statute is enacted to benefit a **specific class of people**.

Beneficial construction will be applied to a statute, which brings into effect provisions for **improving** the conditions of certain **classes of people who are under privileged or who have not been treated fairly** in the past. In such cases it is permissible to give an **extended meaning** to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal or clear. Thus, if the language of the statute is clear and unambiguous, the courts must follow the plain meaning and cannot stretch the language beyond its natural meaning.

Question 16

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by……." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

Answer

The word **'shall'** is used to raise a presumption of something which is **mandatory or imperative** while the word **'may'** is used to connote something which is **not mandatory** but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words **"may and shall"** can be interpreted **interchangeably** depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be **considered as mandatory or directory**.

In the given case, it can be said that the word **"may" should be taken as mandatory** force, because the law will never allow the formation of company with unlawful object.

Here the word used **"may" shall be read as "shall"**. Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

Question 17

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:

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

Question 18

Enumerate when does the rule of Ejusdem Generis apply.

Answer

The rule of Ejusdem Generis applies when:

1. The statute contains an enumeration of **specific words**
2. The subject of enumeration **constitutes a class** or category
3. That class or category is **not exhausted** by the enumeration
4. **General terms follow** the enumeration; and
5. There is **no indication of a different legislative intent**.

Question 19

What do you mean by the rule "Ejusdem Generis"? State any three situations when the Rule of "Ejusdem Generis" is not applied by the courts.

Answer

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

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

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

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

Secondary Rules of Interpretation/Construction

Question 20

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

Answer

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

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

Fresh orange juice is not a fruit juice

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

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

Private Dispensary of a doctor is not a commercial establishment

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

Question 21

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 Expositio est 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.

Internal Aids to Interpretation/Construction

Question 22

How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment?

Answer

(i) **Title:** An enactment would have what is known as 'Short Title' and also a 'Long Title'. The **short title merely identifies the enactment** and is chosen merely for convenience. The **'Long title' describes the enactment** and does not merely identify it.

The Long title is a **part of the Act** and, therefore, can be **referred to for ascertaining the object and scope** of the Act.

(ii) **Preamble:** It expresses the **scope and object** of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to the remedied by it.

The preamble like the Long title can legitimately be **used for construing it**. However, the preamble **cannot override** the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Question 23

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].

Question 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 25

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 26

How far are 'marginal notes' in an enactment helpful in interpreting any of the parts of an enactment?

Answer

Marginal Notes: Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section **can not be used for construing** the Section. In C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament **cannot be referred to for the purpose of construing the statute**", and the same view has been taken in many other cases. Many cases show that reference to marginal notes may be permissible in **exceptional cases** for construing a section in a statute. [Deewan Singh v. Rajendra Pd. Ardevi, (2007)10 SCC, Sarabjit Rick Singh v. Union of India, (2008) 2 SCC]

However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made **use of in construing the Articles**.

Example: Article 286 of the constitution furnishing "prima facie", some clue as to the meaning and purpose of the Article [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC]

Question 27

How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means

(ii) 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 28

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 Act, **language of the provision and object intended** to be served thereby.

Question 29

(i) What is the purpose of inclusion of 'definitions' of certain words and expressions in the body of any statute?

(ii) The definition sometimes includes the words 'mean', 'include', 'means and include' and 'to apply to and include'. What is the meaning of such words?

Answer

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

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

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

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

(ii) Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

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

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

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

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

Question 30

If it is defined as:

(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".

(ii) "Person" includes, under the Consumer Protection Act,1986.

How would you interpret/construct the nature and scope of the above definitions?

Answer

Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

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

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

Thus,

(i) The definition is **restrictive and exhaustive** to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall deemed to be company.

(ii) The definition is **inclusive in nature**, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Question 31

Whether Illustrations will have effect of modifying the language of the section in connection with Interpretation of Statutes? Explain with the help of an example.

Answer

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

Many Sections of an Act have illustrations appended to them. These illustrations **follow the text of the sections** and, therefore, **do not form a part of the sections**. However, illustrations do **form a part of the statute** and are considered to be of relevance and value in **construing the text of the sections**. However, illustrations **cannot have the effect of modifying the language of the section** and can neither curtail nor expand the ambit of the section.

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

Question 32

What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes.

Answer

Normally a Proviso is added to a section of an Act to **except something or qualify** something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.

The effect of proviso is to qualify the preceding enactment which is expressed in terms which are too general.

It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It **carves out an exception to the main provision** to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

Question 33

(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

(ii) Does an explanation added to a section widen the ambit of a section?

Answer

(i) 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]

(ii) 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 any 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 34

Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

Answer

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. It **carves out an exception to the main provision** to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to **restrain the enacting clause** to particular cases	'Proviso' is used to **remove special cases** from general enactment and provide for them specially	'Saving clause' is used to **preserve from destruction** certain rights, remedies or privileges already **existing**

Question 35

What does the principle of "reading the statute as a whole" imply in the interpretation of statutes? Explain with the help of an example.

Answer

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**.

Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

External Aids to Interpretation/Construction

Question 36

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).

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.

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 only ancient and not recent statutes in India.

Question 37

What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?

or

Explain how 'Dictionary Definitions' can be of great help in interpreting/constructing an Act when the statute is ambiguous.

Answer

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

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

Question 38

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 **external circumstances which led to the enactment** in question is of much significance in construing any enactment. We have to take help from **all those external or historical facts** which are necessary in understanding and comprehension of subject matter and 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 & 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.

Rules of Interpretation/Construction of Deeds and Documents

Question 39

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 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.

CHAPTER - 15
The Foreign Exchange Management Act, 1999

Applicability of Foreign Exchange Management Act (FEMA)

Question 1

Define "Foreign Exchange" and "Foreign Security" as per the provisions of the Foreign Exchange Management Act, 1999.

Answer

Definition of 'Foreign Exchange'

According to Section 2(n) of the Foreign Exchange Management Act, 1999, Foreign Exchange means **foreign currency and includes**:

(i) deposits, credits and balances **payable in any foreign currency**,

(ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but **payable in any foreign currency**,

(iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but **payable in Indian currency**.

Definition of 'Foreign Security'

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

Residential Status under FEMA, 1999 [Section 2(u), 2(v) and 2(w)]

Question 2

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.

Question 3

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**.

Question 4

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

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

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

(i) On his return for attending the family function on 30.04.2024.

(ii) In case, instead of vacation, he joins an employment in an Indian company after arriving on 30.04.2024.

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 outside from 2.4.2024** till the time he works in Jeff Fashion Ltd. in Paris, as he has gone out of India for or on taking up employment outside India.

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

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

Question 5

Ravi, an Indian citizen, works as software engineer for an international company. During the previous financial year (2023-2024), Ravi resided in India for 200 days. However, in April of 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 Vacation**

(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 6

'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?

or

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

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. 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). 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 but 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**.

Regulation and Management of Foreign Exchange

Question 7

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

(i) Authorised person

(ii) Currency

Answer

(i) Authorised person

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

(ii) Currency

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

Question 8

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the meaning of the term "current account transaction".

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,

(i) payments due in connection with foreign trade, other current business, services, and **short-term banking** and credit facilities in the **ordinary course** of business.

(ii) payments due as **interest** on loans **and as net income** from investments.

(iii) remittances for **living expenses** of parents, spouse and children residing abroad, and

(iv) **expenses** in connection with foreign **travel, education** and medical care of parents, spouse and children.

Question 9

Mr. Patel, a resident of India, wants to pay for his child's education fees in the United States. Decide whether the nature of transaction be classified as a current account transaction as per the FEMA, 1999?

Answer

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

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

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

Current Account Transactions (CUAT) [Section 5]

Question 10

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 11

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

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**.

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 12

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

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. 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.

Question 13

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?

or

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

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 14

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 15

(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

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 drawl 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.

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 16

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) 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.

(ii) 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?

Answer

Approval to the following transactions under FEMA, 1999:

(i) 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**.

(ii) 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 17

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

(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**. 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**. 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 18

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

Residential Status: 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. 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 15th July 2021 and from 16th 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**.

Question 19

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.

Question 20

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 21

(i) Mr. Amrish has been admitted to a postgraduate program at a foreign university and intends to join soon. The annual course fee is approximately ₹ 3,50,000. Kindly advise his parents on how they can make the remittance for the fees under the provisions of the Foreign Exchange Management Act (FEMA), 1999.

(ii) After completing his studies, Mr. Amrish is employed by a joint venture of a foreign company in India. The company intends to send him on deputation to handle business operations in India. His family resides outside India, and he would like to know if he can remit his salary to support their maintenance. Advise Mr. Amrish as per the provisions of the Foreign Exchange Management Act, 1999.

Answer

(i) Under the Foreign Exchange Management Act (FEMA), 1999 read with the **Schedule III** of the FEM (Current Account Transactions) Rules, 2000, the **overall limit** prescribed is generally **USD 250,000**. Any additional remittance in excess of such limit shall require **prior approval of the RBI**. In the given case, the remittance of fees of Amrish for pursuing **education abroad**, may avail exchange facility for an amount in excess of the limit prescribed under the LRS in a Financial Year. In such a case, the applicable limit for such an individual would be reduced from USD 250,000 by the amount so remitted.

(ii) Under the Foreign Exchange Management Act (FEMA), 1999, Mr. Amrish can remit his salary earned abroad to his family in India, subject to the following regulations:

A person (who is resident but not permanently resident in India) is a **citizen of India**, who is on **deputation** to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, **may make remittance up to his net salary** (after deduction of taxes, contribution to provident fund and other deductions).

As per the stated law, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

Capital Account Transactions (CAAT) [Section 6]

Question 22

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

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

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

Answer

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

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

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

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

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

Ms. Rose deposited the amount of rent from the house to her account in USA. Out of that amount she

purchased another house in USA after returning to India. **Ms. Rose is a person resident in India** due to joining an employment in India.

As per section 6(4)(iv) of the Foreign Exchange Management Act, 1999 (FEMA), a person resident in India may **freely utilize all their eligible assets abroad** as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad **without approval of Reserve Bank**, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by her and the transactions is not in contravention to extant FEMA provisions.

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

Question 23

Mr. V is a person of Indian origin who had moved to USA along with his wife in the year 1998 and had been living there until 2024. He was holding joint bank accounts with his wife in USA since 1998. On the demise of his wife on 17th November, 2024, he had returned permanently to India on 24th November, 2024. He also inherited his wife's money after her death, which got transferred to his bank account in USA. After few days of his return to India, he has paid premium from his bank account in USA of his insurance policy, which he had taken when he was in USA. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether Mr. V is permitted to carry out the above transactions.

Answer

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

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

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

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

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

Question 24

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

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

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

(i) Whether investment by Mr. Murari Lal and payment of commission on this transaction is permissible?

(ii) How much maximum amount of commission can be paid to each broker without RBI approval?

(Ignore the USD - Rupee Exchange Rate)

Answer

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

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

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

(i) Yes, the investment by Mr. Murari Lal and payment of commission on this transaction is **permissible**.

(ii) Calculation of maximum commission that can be paid without the approval of RBI.

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

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

Question 25

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**
   - Income earned through **employment, business, or vocation** outside India **while** Mr. Arjun was a **non-resident**.
   - **Investments** made abroad during his **non-resident status**.
   - **Gifts or inheritance** received from a **non-resident Indian**.
3. **Foreign Exchange and Income therefrom**
   - 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**
   - Mr. Arjun may **freely utilize all eligible assets abroad**, including the income on such assets or sale proceeds received after his return to India.
   - 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.