Chapter 1 – Preliminary

**Q1. Zenith Motors Ltd. (ZML) holds 18% of the total voting power in Torque Automobiles Pvt. Ltd. (TAPL). Apart from shareholding, both companies have entered into a Business Collaboration Agreement, under which:**

**a) ZML will approve all key business decisions of TAPL before they are implemented.**

**b) TAPL and ZML jointly manufacture a new EV battery through a joint arrangement in the form of Company, where:**

**c) both share control over major strategic decisions, and**

**d) both have rights to net assets of the joint project.**

**Based on the above facts, answer:**

**(a) Whether TAPL is an Associate Company of ZML?**

**(b) Whether the joint arrangement created between the two companies will be treated as a Joint Venture under Section 2(6)?**

**Give reasons with reference to the legal provision of the Companies Act, 2013.**

Solution :-

Provisions :- As per section 2(6) of the Companies Act, 2013, Associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Analysis & Conclusion

In the given case, Zenith Motors Ltd. (ZML) holds 18% of the total voting power in Torque Automobiles Pvt. Ltd. (TAPL). Further, ZML will approve all key business decisions of TAPL before they are implemented. TAPL and ZML jointly manufacture a new EV battery through a joint arrangement in the form of Company, where d) both have rights to net assets of the joint project

(a) Yes TAPL is an associate company of ZML because ZML has control of or participation in business decisions of TAPL under an agreement

(b) Yes, the joint arrangement created between the two companies will be treated as a Joint Venture because both have rights to net assets of the joint project

**Q2. BlueNova Innovations Pvt. Ltd. is a private company engaged in software development.**

**The company is not recognised as a start-up Company.On 30 March 2024, BlueNova passes a board resolution to convert itself into an OPC effective from 1 April 2024. The Board decides to omit the Cash Flow Statement from FY 2023–24 financial statements, arguing:**

**"We will become an OPC from next year, so exemption should apply."The auditor refuses, saying Cash Flow Statement is mandatory.**

**(a) Whether BlueNova can claim exemption from preparing a Cash Flow Statement for FY 2023–24?**

**(b) Does future conversion into OPC impact current year financial reporting requirements?**

Solutons:-

Provisions

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):

Provided that the financial statement, with respect to One Person Company, small company and dormant company and Private Startup Company may not include the cash flow statement.

Analysis & Conclusion

In the given case, On 30 March 2024, BlueNova Innovations Private Limited passes a board resolution to convert itself into an OPC effective from 1 April 2024. The Board decides to omit the Cash Flow Statement from FY 2023–24 financial statements, arguing "We will become an OPC from next year, so exemption should apply."

(a) No, BlueNova cannot claim exemption from preparing a Cash Flow Statement for FY 2023–24 since conversion into OPC is Effective from 1 April 2014

(b) No, future conversion into OPC does not impact current year financial reporting requirements

Q3. **AstraGen Pharmaceuticals Pvt. Ltd. is an Indian company and a wholly-owned subsidiary of BioThera Inc., USA. Holding Company follows the January–December financial year (1 Jan to 31 Dec) as per US GAAP norms for global consolidation. AstraGen is required by its parent company to submit consolidated financials in alignment with the calendar year (Jan–Dec).As per the Companies Act, AstraGen must follow 1 April–31 March as its financial year. Explain whether AstraGen can change its financial year to the January–December financial year (12 months)**

Solution:-

**Provisions**

As per Section 2(41) of the Companies Act, 2013, Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that 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.

**Analysis & Conclusion**

AstraGen Pharmaceuticals Pvt. Ltd. is an Indian company and a wholly-owned subsidiary of BioThera Inc., USA. Holding Company follows the January–December financial year, However, AstraGen must follow 1 April–31 March as its financial year. Further, AstraGen is required by its parent company to submit consolidated financials in alignment with the calendar year (Jan–Dec).

Yes, AstraGen can change its financial year to the January–December after taking approval of Central Government.

**Q4. Delta Robotics Pvt. Ltd. is an Indian private company engaged in the manufacture of automation components. For the financial year 2024–25, the company reported a paid-up share capital of ₹2.10 crore and a turnover of ₹34 crore for the immediately preceding financial year. Relying on these numbers, the Board of Directors strongly believes that the company should be eligible for all Small Company benefits. However, the corporate structure of Delta Robotics creates a critical complication. The company holds 49% of the equity shares in Epsilon Tech Pvt. Ltd. Although this shareholding is less than 50%, Delta has a contractual right—through a joint control agreement—to**

**appoint three out of the five directors to the Board of Epsilon Tech. Whether Contention of Directors is valid?**

Solution:-

Provisions

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 fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

(A) 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.

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

Further, As per 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.

**Analysis & Conclusion**

In the Given case, Delta Robotics Pvt. Ltd. reported a paid-up share capital of ₹2.10 crore and a turnover of ₹34 crore for the immediately preceding financial year. The company holds 49% of the equity shares in Epsilon Tech Pvt. Ltd. Although this shareholding is less than 50%, Delta has a contractual right—through a joint control agreement—to appoint three out of the five directors to the Board of Epsilon Tech.

Delta Robotics Pvt. Ltd is holding company of Epsilon Tech Pvt. Ltd. Because it has power to appoint three out of the five directors to the Board of Epsilon Tech Pvt. Ltd.

The contention of Directors is invalid because Delta Robotics Pvt. Ltd is a holding company of Epsilon Tech Pvt. Ltd

**Q5. 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?**

**Sol.** **(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.

Q6.**Apex Infra Private Limited is a private company registered under the Companies Act, 2013. Initially, the company had three members. Due to internal disputes, two members resigned on 1st January 2024, leaving the company with only one member. Despite the reduction in membership below the statutory minimum of two members for a private company, the remaining member, Mr. Rahul, continued to carry on the business of the company without inducting any new member. The company continued its operations in the same manner for more than six months, i.e., till 31st July 2024. During this period, on 15th July 2024, Apex Infra Private Limited entered into a contract with XYZ Suppliers and incurred debts of ₹25 lakhs. Mr. Rahul was fully aware that the company was carrying on business with a reduced number of members below the statutory minimum. Subsequently, the company failed to repay the dues to XYZ Suppliers, who initiated legal proceedings to recover the amount. Whether Mr. Rahul is personally liable for the debt of Rs. 25 Lakhs.**

Solution :-

As per Section 3A of the Companies Act, 2013,

If at any time, the number of members of a company is reduced below seven (7) and two (2) in case of a public and private company, respectively; and Such company carries on business for more than six months with reduced number of members;

Every such person who carries on business after those six months is cognizant (aware) of the fact that business is carried with reduced members.

Such members are liable for the payment of the whole debts of the company contracted during that time (after elapse of six months).

In the given case, due to internal disputes in Apex Infra Private Limited, two members resigned on 1st January 2024, leaving the company with only one member. Despite the reduction in membership Mr. Rahul, continued to carry on the business of the company without inducting any new member till 31st July 2024. During this period, on 15th July 2024, Apex Infra Private Limited entered into a contract with XYZ Suppliers and incurred debts of ₹25 lakhs. Subsequently, the company failed to repay the dues to XYZ Suppliers, who initiated legal proceedings to recover the amount.

Yes, Mr. Rahul is personally liable for the debt of Rs. 25 Lakhs because company has continued the business with less than 2 number for more than 6 months.

Q7. **Bright Horizon Enterprises was operating as an unlimited company. On 1st April 2024, the company decided to get itself registered as a limited company under the provisions of the Companies Act, 2013. After completing the prescribed procedure, a fresh certificate of incorporation was issued reflecting its new status as a limited company. Prior to such conversion, Bright Horizon Enterprises had taken a term loan of ₹50 lakhs from ABC Bank, and entered into a long-term supply contract with**

**XYZ Traders. After conversion, Bright Horizon Limited defaulted in repayment of the loan and failed to fulfill its contractual obligations towards XYZ Traders. The company contended that since it had been converted into a limited company, the debts and contractual obligations incurred before conversion were no longer enforceable as unlimited liability. Whether the contention of Company is correct.**

Sol The registration of a company under section 18 of the Companies Act, 2013 shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

In the Given case, was operating as an unlimited company. On 1st April 2024, Bright Horizon Enterprises decided to get itself registered as a limited company from unlimited company. After completing the prescribed procedure, a fresh certificate of incorporation was issued reflecting its new status as a limited company.

Prior to such conversion, Bright Horizon Enterprises had taken a term loan of ₹50 lakhs from ABC Bank, and entered into a long-term supply contract with XYZ Traders. After conversion, Bright Horizon Limited defaulted in repayment of the loan and failed to fulfill its contractual obligations towards XYZ Traders. The company contended that since it had been converted into a limited company, the debts and contractual obligations incurred before conversion were no longer enforceable as unlimited liability.

Contention of Bright Horizon Enterprises is incorrect since old liabilities before conversion will be enforced as if such registration had not been done.

Q8. **Explain the exceptions to the Doctrine of Indoor Management.**

**Sol. 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.

Q9**. 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? (RTP SEP 24)**

**Sol.** (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 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.

Q10. **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.**

Sol . 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.

Q11. **S Ltd. is a company in which H Ltd. is holding 60% of its paid-up share capital. One of the shareholders of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. And 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way?**

**Sol. Relevant Provisions:** 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:

(i) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
(ii) where the subsidiary company holds such shares as a trustee; or
(iii) 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.

**Conclusion:** 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 Ltd. can hold shares in H Ltd.

## Chapter 3 – Prospectus

Q12. **Orion Technologies Limited, a listed public company, issued a prospectus to raise funds for setting up a new manufacturing plant. After raising the funds, the company decided to change the object of the issue and proposed to use the money for investing in equity shares of another listed company. The Board of Directors approved the proposal and decided to proceed without obtaining shareholders' approval. No notice explaining the**

**justification for such variation was published in newspapers. Certain shareholders opposed the change and demanded protection of their interests. With reference to the provisions of the Companies Act, 2013, examine whether Orion Technologies Limited can vary the objects stated in the prospectus in the above manner.**

Sol :- As per Section 27 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.

Further, details of the notice which has to be 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.

Such company is not to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

The dissenting shareholders 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.

No, Orian Technologies cannot vary the objects mentioned in the prospectus since company did not take the shareholder's approval and no notice is published in newspapers and also company proposes to use the money for investing in equity shares of another listed company

Q13**. The Board of Directors of Chandra Mechanical Toys Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.**

**Sol.** 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.

**Q14. 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.**

**Sol.** 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.

(i) 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. The period of validity is to commence from the date of opening of the 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.

(ii)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.

(iii)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.

(iv)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.

Q15. **Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh.**

The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Sol. Relevant Provision: 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. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might sustained from the purchase of shares, which has not been mentioned in the given case.

Conclusion: Hence, Mr. Alok will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any mis-statements in the prospectus under the following situations:

- Under section 26(5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
- Under section 35(2), 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;
- That, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or 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 delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

Q16. **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 the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.**

Sol. 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:

(a) The payment of such commission shall be authorised 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.

Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less, 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.

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.

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.

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.

Q17 **Prakash 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 four are qualified institutional buyers and remaining are individuals. Before the 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 Prakash Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with**

**provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?**

**Sol. Relevant Provision:** 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.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, Rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though 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.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

**Conclusion:** In the given case Prakash Limited, though a public company but the 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, the company complies the private placement provisions.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second of fer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

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 well be treated as private placement offers.

Chapter 4 – Share Capital and Debentures

Q18. **MNO limited has the following equity share capital –**

| | |
|---|---|
| **Class-1: Equity Share Capital – 3,00,000 equity shares of Rs. 10 each.**<br>**(1 voting right for every 1 share)** | **Rs. 30,00,000** |

| | |
|---|---|
| **Class-2: Equity share Capital – 50,000 equity shares of Rs. 10 each. (1 voting right for every 5 shares)** | **Rs. 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?**

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

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

Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting. Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three- fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Third – Where the holders of not less than10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

(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.

Q19. **Walnut Limited has an authorised share capital of 1,00,000 equity shares of Rs. 100 per share and an amount of Rs. 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice .**

**Sol.** According to 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" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company:

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

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

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

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

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

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. Share Capital and Debentures

Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Q20 **Trisha Data Security Limited was incorporated on 1st August, 2019 with a paid- up share capital of Rs. 200 crores. Within such a small period of about one 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.**

**Sol. Relevant provision:** *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.

**Given case and analysis:** Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It *does not make a difference that the company is just about a year old* because no such minimum time limit of 2 years in operations is specified under Section 54.

**Q21 Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs. 10,00,000 (10,000 preference shares of Rs. 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?**

**Sol. Relevant provision:** 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.

**Given case and conclusion:** 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., Rs. 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.

Q22. **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?**

**Sol.** 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), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the 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.

**Q23 Shenoy Limited is a company with an authorized share capital of 20,00,000 equity shares of Rs. 100 each. At the Annual General Meeting (AGM), the shareholders proposed to reduce the face value of each share from Rs. 100 to Rs. 10 and correspondingly increase the number of shares from 20 lakh to 2 crore, keeping the total authorized share capital unchanged.**

**Analyse 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?**
**(RTP MAY 25 )**

**Sol.** 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 Shenoy Limited, in the AGM requested the company to reduce the face value of each share (from Rs. 100 to Rs. 10) and increase the number of shares than fixed by the memorandum (i.e. from 20 Lakh to 2 crore).

According to the above provision, Shenoy Limited, having authorized capital of 20,00,000 equity shares (face value Rs. 100 each) can reduce the face value of each share to Rs. 10 each and increase the shares to 2,00,00,000 [thereby keeping the total amount of authorized share capital to Rs. 20,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders can be considered.

The company has to alter its memorandum in its general meeting as per the procedure contained in section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

**Q24. 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, 2020 showed the following position:**

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

**The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholder. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. [ICAI Module, MTP Nov 2020]**

**Sol.** According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

Provided that no issue of bonus share shall be made by capitalising reserves created by evaluation of assets.

***Conditions for issue of Bonus Shares:*** No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of 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. For the issue of bonus shares Shankar Portland Cement Limited will require reserves of Rs. 50,00,000 (i.e. half of Rs. 1,00,00,000 being the paid-up share capital), which is readily available with the company.

Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

. **Q25 Which fund may be utilised 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.**

**Sol.** Funds utilised 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 the 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).

Q26 **Xgen Limited has a paid-up equity capital and free reserves to the extent of Rs. 50,00,000. The company is planning to buy-back shares to the extent of Rs. 4,50,000. The company approaches you for advice with regard to the following:**

**(*a*) Is special resolution required to be passed?**

**(*b*) What is the time limit for completion of buy-back?**

**(*c*) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buyback?**

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

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

(*b*) a *special resolution* has been passed at a general meeting of the company authorising the buy-back: Provided that nothing contained in this clause shall apply to a case where:

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

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

***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 Rs. 50,00,000. The company planned to buy back shares to the extent of Rs. 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 (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorised 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.*

Q27 **VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the 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.**

**Sol. Relevant provision:** 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, n 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.

**Given case:** 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 excepting 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.

**Analysis and conclusion:** 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.

## Chapter 5 – Acceptance of Deposits

Q28 **Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.**

**Sol. 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 the 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 deposits or interest

(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.

Q29 **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 ₹30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue.**

**(ii) Polestar Traders Limited received a loan of ₹30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.**

**(iii) City Bakers Limited failed to repay deposits of ₹50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in default, liable to any penalty?**

**(iv) Shringaar Readymade Garments Limited wants to accept deposits of ₹50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?**

**(v) Is it in order for the Diamond Housing** Finance Limited to accept and renew deposits from the public from time to time?

**[ICAI Module, Dec 2021]**

**Sol.** (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 lacs from Ritesh 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. In view of Rule 2 (1) (*c*) (*xvii*) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of ₹30 lacs 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 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. If these conditions are satisfied ₹30.00 lacs shall not be treated as deposit.

(iii) By not repaying the deposit of ₹50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crores.
- Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty- five lakhs but which may extend to rupees two crores.

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

(iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than 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:

(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. In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs 50 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.

(v) According to section 73 (1) of the Act, no company can accept or renewal of deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Q30 **Define the term 'deposit' under 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 recognized 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. T, 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.**

**Sol. 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 recognized 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. T, 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 details of money so accepted in Board's report.

**Q31 RS Ltd. received share application money of ₹50 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit. The share application money of ₹5 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 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.**

**[Jan. 2021]**

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

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

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the

application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

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

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

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

1. If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit.

   In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit.

   Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹50 Lac as 'Deposits' on 31.07.2019.

2. Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Q32. **Viki Limited engaged in the business of consumer durables. It is managed by a team of professional manage. 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 & 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.**

**[Nov. 2020]**

**Sol.** (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 ecured 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.

Chapter 6 – Registration of Charges

**Q33 Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ` 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it. During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023. So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.**

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

**In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:**
**(i) When trigger point for the registration of charge shall arise,**
**(a) at the time of credit limit sanctioned by the Bank; or**
**(b) at the time of availing of credit limit when cheque was issued by the company?**
**(ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd? (SEP 24)**

**Sol.**

(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.

**Q34. 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.**

**(RTP JAN 25 )**

**Sol.** 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.

Q35. **What is 'Floating Charge'? When does it get crystallized?**

**Sol.** 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 crystallized 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 crystallized. On crystallization 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.

**Q36. 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.**

**Sol.** The firm 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.

According to section 86 of the Companies Act, 2013, if any company is a default in complying with any of the provisions of this chapter, 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).

**Q37 Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on**

**7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.**

**Sol.**

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, 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, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the 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 Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

if the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of 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 11th May, 2019. Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed ad valorem fees.

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

Chapter 7 – Management and Administration

**Q38. 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?**

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

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

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

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

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

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

Thus, the requisite quorum was present.

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

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

**Q39 Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming of world class cricketers. The foundation selects young boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently it is having 1200 members. The Annual General meeting of the company is usually held at the club cum registered office of the company at Jaipur.**

**The members in one of the general meetings have strongly suggested that the next Annual general meeting of the company be held at a hotel in near vicinity of the Registered office at Jaipur instead of the Club as the same has a congested sitting area. It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with facility of only physical voting and no E-Voting to be provided to the members.**

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

**(i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?**

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

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

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

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

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

Alternate Answer to Part (i)

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

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

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

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

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

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

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

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

**Q40 Prateek Limited, an unlisted company, registered in the State of Arunachal Pradesh with 42 shareholders, wants to organize the Annual General Meeting of the company on 13th August 2024 which happens to be Raksha Bandhan, a day declared as a holiday by the Government of Arunachal Pradesh. Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.**

**Sol.** Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National

Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

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

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

In the instant case, Prateek Limited, an unlisted company, can hold its AGM on 13th August 2024 which happens to be a holiday declared by the Government of Arunachal Pradesh and so, this is not a national holiday.

**Q41Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.**

**Sol.** Validity of Resolution passed in the EGM called by the Requisitionists

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

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

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

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

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

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

In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. Jai and Mr.

Narayan holding ₹ 60,000 (each holding ₹ 30,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

**Q42ABC Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Raj, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?**

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

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

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

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

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

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

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

**Q43Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:**

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

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

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

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

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

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

In the instant case,

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

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

**Q44Prakash 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.**

**Sol.** (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) The requisition must be deposited by them at CP where the 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 resolution, 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 the resolution shall also be deposited by Prakash and his friends along with the requisition.

**Q45 Om Ltd. served a notice of 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. Pramod as the statutory auditor.**

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

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

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

(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. Pramod as the auditor.

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

**Q46 Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM.**

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

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

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

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

**Q47 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?**

**Q48 Who is authorized to sign the annual return?**

**Sol.** 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 advise 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.

## Chapter 8 – Declaration and Payment of Dividend

**Q49 (i) YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2018-19 out of the profits of current year. The company has**

**earned a profit of ₹910 crores during 2018-19. 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.**

**(ii) Karan, holder of 5,000 equity shares of ₹100 each of M/s. Rachit Leather Shoes Limited did not pay final call of ₹10 per share. M/s. Rachit Leather Shoes Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive**.

**Sol.(i) 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 crores for the financial year 2018-19. 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.

(ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, M/s. Rachit Leather Shoes Limited can adjust the unpaid call money of ₹50,000 against the declared dividend of 10%, i.e., 5,00,000 × 10/100 = 50,000.

Hence, call money of ₹50,000 not paid by Karan can be adjusted fully from the entitled dividend amount of ₹50,000 payable to him.

**Q50 Alex limited is facing loss in business during the financial year 2018-2019. In the immediately 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 at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid?**

**Sol. 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.

**Conclusion:** According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediately preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively.

Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7 + 11 + 12 = 10%) 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. 2018-2019 is not valid.

**Q51 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.**

**Sol.** **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.

**Conclusion:** In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013.

Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

**Q 52 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.**

**Sol.** **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.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

**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 rupee 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.

**Q 53 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**

**Sol.** **Section 127** of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time.

One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

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

**Q 54 Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018-19, 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.**

**(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 analyses these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends**.

**Sol. (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 noncompliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(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.

**Q55 The Annual General Meeting of ABC Bakers Limited held on 30th May 2019, 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 2019. 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**.

**Sol. 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.

**Q56 Long Boots Ltd. a listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new Production Manager, Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of 50 lakh after a gap of eight years during which profits were inadequate to distribute the same.**

**The dividend thus proposed is to be met partially out of the current year profit of 16 lakh. Accumulated profits during the past eight years were170 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.**

Sol. 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

**Q 57 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.**

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

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. According to the given facts, XYZ Ltd. is facing losses in business during the first and second quarter of financial year 2023-2024. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 15% and 30% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+15+30=60/3) at which dividend was declared by it during the immediately preceding three financial years.

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

## Chapter 9 Accounts of Companies

**Q58 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?**

**Sol.**

(i) According to section 130 of the Companies Act, 2013, a company shall not:

a. re-open its books of account and
b. recast its financial statements,

unless an application in this regard is made by:

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

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

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

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

(ii) According to section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or

b. the report of the Board does not comply with the provisions of section 134.

They may prepare revised financial statement or board's report in respect of any of the three preceding financial years.

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

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

**Q59 The balances extracted from the financial statement of Pacific Limited are as below:**

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

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

**Sol.** According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2022 to 31.3.2023). Hence, Pacific Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2023-24.

**Q60 The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly mention any four matters to be furnished in the said statement.**

**Sol.** Directors' Responsibility Statement: According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularit ies;

(4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

**Q61 HelpIndia Limited was incorporated on 1st April 2022. The balances extracted from its audited financial statement are as given below**

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

**HelpIndia Limited is considering allocating the minimum required amount for Corporate Social Responsibility (CSR) activities to be undertaken during the financial year 2024-25, provided it is mandatory to do so. They seek advice on this matter.**

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

**Sol.** According to section 135(1) of the Companies Act, 2013, every company net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Also, according to sub-section 9, where the amount to be spent by a company under sub-section 5 does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of HelpIndia Limited for the FY 2023- 24 is ₹ 10 crore, hence, HelpIndia Limited is required to constitute a CSR committee during FY 2024- 25 as the Net profit before tax for the FY exceeds ₹ 5 crore.

2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (HelpIndia Limited was incorporated on 1st April 2022.)

Average Net Profit since incorporation: (₹ 11 crore + ₹ 10 crore)/ 2 = ₹ 10.5 crore

Minimum contribution towards CSR will be: 2% of ₹ 10.5 crore = ₹ 0.21 crore or ₹ 21 lakh.

In the given question, since the amount to be spent by HelpIndia Limited is not exceeding ₹ 50 lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

**Q62 Crystal Limited recently received a communication from the Central Government requesting the preparation of periodical financial results along with the completion of either a full audit or a limited review of these financial results. The Board of Directors, however, has raised an objection, arguing that Crystal Limited, being an unlisted company, are not obligated to prepare periodical financial results.**

**Analyze the situation, citing relevant provisions of the Companies Act, 2013, with respect to the company's obligation regarding the preparation of periodical financial results.**

**Sol.** Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed:

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Crystal Limited is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

**Q63 Kesar Limited, an unlisted company furnishes the following data:**

**(a) Paid-up share capital as on 31st March 2024 ₹ 49 Crore.**

**(b) Turnover for the year ended 31st March 2024 ₹ 100 Crore**

**(c) Outstanding loan from bank as on 3rd March 2024 is ₹ 102 crore (₹ 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 ₹ 95 crore after repayment.**

**Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.**

**Sol.** According to the Companies (Accounts) Rules, 2014, every unlisted public company having:

(A) paid up share capital of ₹ 50 crore rupees or more during the preceding financial year; or

(B) turnover of ₹ 200 crore rupees or more during the preceding financial year; or

(C) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ₹ 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.

**Q64 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??**

**Sol.** 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 all its members, including 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.

## Chapter 10 Audit and Auditors

**Q65 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?**

**(a) (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.

**(ii) 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.

**Q66 ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.**

**Sol.** Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25- 5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

**Q67 M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods of 5 years i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam is the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After cooling period of 5 years, Golden Smith Ltd. may appoint M/s Kukreja & Associates or M/s. Krishna & Associates as its auditors.**

**Why is Golden Smith Ltd. prohibited from appointing M/s Kukreja & Associates as its audit firm, and for how long does this prohibition apply?**

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

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

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

**Q 68 Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:**

**(i) Chintamani is a practicing Chartered Accountant, and his spouse, Chitralekha, holds securities of Nagmani Ltd. valued at a face value amount of ₹ 80,000 (with a market value of ₹ 50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.**

**(ii) Mani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company.**

**(iii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹ 1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role?**

**Sol.** **(i)** As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further the proviso provides that, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Chitralekha (spouse of Chintamani, the auditor), is having securities of Nagmani Limited having face value of ₹ 80,000, which is within the prescribed limits under the proviso to section 141(3)(d)(i). Therefore, Chintamani will be eligible to be appointed as an auditor of Nagmani Limited.

**(ii)** As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Mani, real sister of Mr. Priyanshu (Chartered Accountant) is the CFO (a KMP) of Parivar Ltd., hence, Mr. Priyanshu will be disqualified to be appointed as an auditor in the said company.

(iii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

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

**Q69 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.**

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

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

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

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

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

**Q70 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**.

**Sol.** 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.

**71 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.**

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.

**72 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:**

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

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

So, as per the definition, we can conclude:

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

It is a Foreign Company.

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

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

It is not a foreign company.

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

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

It is not a foreign company.

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

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

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

Alternate Answer

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

**Q73 Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.**

**Sol.** 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, 2023.

**Q74 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].**

**Sol.** 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.

## Chapter 12 – The Limited Liability Partnership Act, 2008

**Q75 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.**

Sol. 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.

**Q76 (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.**

**Sol.** (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.

**Q77 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.**

**Sol.** 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.

**Q78 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?**

**Sol.** 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.

**Q79 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?**

**Sol**. Section 31 of the Limited Liability Partnership Act, 2008 provides that:

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

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or when any information given by any partner

or

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

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

(i) Whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?
Yes, the Tribunal has the power to waive or reduce the penalty of
` 1,25,000 being imposed on Mr. J as he has provided useful information that is helpful towards investigations in the case of fraud by the LLP.

(ii) Can the LLP suspend Mr. J?
Section 31(2) of the LLP Act, 2008 further provides that:
No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). Hence, Mr. J cannot be suspended from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

**Q80 State the circumstances under which the winding up of an LLP may be ordered by the Tribunal.**

**(JAN 2025)**

**Sol.** Circumstances in which Limited Liability Partnership may be wound up by Tribunal (Section 64 of the Limited Liability Partnership Act, 2008): A limited liability partnership may be wound up by the Tribunal:

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

(b)if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(c)if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(d)if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(e)if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

**Q81Sun 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.**

**(a)** (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.

**Q82 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.**

**Sol.** 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 trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

(ii) Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

**Q83 Amit and Priya are partners in XYZ LLP, a consulting firm. Recently, Priya moved to a new address but forgot to notify the LLP within the required period. A month later, Amit's cousin, Ramesh, expressed interest in joining XYZ LLP as a partner, and after a few discussions, he was accepted as a new partner. However, XYZ LLP did not immediately update the Registrar of Companies (RoC) regarding Priya's address change or Ramesh's admission as a partner. Two months after Ramesh joined, the LLP filed a notice with the RoC about these changes.**

**Advise the LLP about the default on part of LLP about the non compliance in respect to not informing the ROC about:**

**(i) Priya's address change**

**(ii) Ramesh's admission as a partner.**

Sol. 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 being notified of Priya's new address. As

Priya did not inform the LLP about change of address and consequently LLP did not file a notice regarding the change in address of Priya with the Registrar, XYZ LLP is not in compliance with the required timeline.

(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.

**Q84 JEET LLP is a small scale consulting firm. For the financial year 2024-25, the firm reported a total contribution of RS. 20 lakh and an annual turnover of RS. 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" under the LLP Act, 2008.**

**(b) If JEET LLP plans to expand its business and projects and resulting turnover exceeding RS. 50 crore in the next financial year, determine the legal position as to the nature of the LLP as a "Small LLP".**

**Sol.** (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 RS. 25 lakh (or a higher prescribed amount, up to RS. 5 crore). Here, contribution of JEET LLP is RS. 20 lakh, which is within the limit.

(ii) Its turnover does not exceed RS. 40 lakh (or a higher prescribed amount, up to RS. 50 crore). Here turnover of JEET LLP is RS. 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 RS.50 crore in the 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.

**Q85 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?**

**Sol.** 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.

## Chapter 13 - THE GENERAL CLAUSES ACT, 1897

**Q85** 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.

**Sol.** In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj75 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.

**Q86** What is "Financial Year" under the General Clauses Act, 1897?

**Sol.** 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 General Clauses Act, 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.*

**Q87** 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?

**Sol.** 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 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.

**Q88** Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and 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?

**Sol.** 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 27/09/2018. 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 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day i.e. 27/10/2018 will be included. *Accordingly*, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (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, 2018 to 3rd November, 2018 (both days inclusive).

**Q89** 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.

**Sol.** (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.

**Q90** What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

**Sol.** **Meaning of Service by post:** 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:

- properly addressing pre-paying, and
- 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.

**Q91** 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.

**Sol.** 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 vs. 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 neither tenable not based upon sound exposition of law.

**Q92** M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M 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

**Sol.** "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, M 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.

Q93 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.

**Sol.** 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.

Q94 Explain the following with reference to the provisions of the General Clauses Act, 1897:

(i) Movable Property
(ii) Oath

**Sol.** **(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.

Q95 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'.

**Sol.** **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.

Q96 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.

**Sol.** 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 byelaws is expressed to be given subject to the condition of the rules or byelaws 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 byelaws, 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 byelaws 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.

Q97 What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897.

**Sol.** **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.

Q98 Explain the following with reference to the provisions of the General Clauses Act, 1897:

(i) Person

(ii) Document

**Sol.** **(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.

Q99 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.

**Sol.** According to section 11 of the General Clauses Act, 1897, in the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that

distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

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

Q100 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.

**Sol.** 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.

Q101 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?

Sol. 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.

## Chapter 14 Interpretation of Statutes

Q102 Explain interpretation of statute aid- 'Read the Statute as a Whole'.

**Sol.** Read the Statute as a Whole:

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions– if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Q103 In what way is 'Heading and Title of a Chapter' considered as internal aid in the interpretation of statutes.

**Sol.** 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.

Q104 Explain the Doctrine of *Contemporanea Expositio*.

**Sol.** 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.

Q105 Write short notes on the following in understanding definitions while interpreting statutes:

(i) Ambiguous definitions

(ii) Definitions subject to a contrary context

**Sol.** (i) **Ambiguous definitions:** Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) **Definitions subject to a contrary context:** When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

**Q106** 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.

Sol. A clause that begins with the words "notwithstanding anything contained" is called a non-obstante clause. Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah v. Pakari Lakshman AIR 1965 AP 220)

In conclusion, a non-obstante clause plays a crucial role in legal drafting by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty and consistency in judicial interpretation.

Q108 What is the meaning and legal significance of the principle "generalia specialibus non derogant"? Explain with an example.

Sol. The principle "generalia specialibus non derogant" means that when a general law and a specific law address the same subject matter, the specific law prevails. This ensures that specialized laws designed for particular situations are not overridden by broader, more general provisions.

Example:

1. General Law: "All contracts must be in writing to be legally enforceable."

2. Specific Law: "An oral contract for the sale of goods under ` 5000 is legally valid."

Here, the general rule states that all contracts must be in writing. However, the specific rule creates an exception for oral contracts involving goods under `5000. According to the principle of "generalia specialibus non derogant", the specific rule will revail in cases involving small-value goods, making oral agreements enforceable despite the broader general rule.This principle helps maintain legal clarity by ensuring that specialized provisions are applied without being overridden by more general laws.

Q109 Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example.

**Sol.** 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 vs. Sodra Devi (1957) 32 ITR 615 (SC)].

Q110 Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

**Sol. 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 CHAPTER Interpretation of Statutes 14 174 Corporate and Other Laws 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.

Q111 (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?

**Sol.** (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. vs. 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 and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

**Q112** 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?

**Sol.** The rules regarding interpretation of deeds and documents are as follows: First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Q113 Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

**Sol.** Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when itis mandatory, it must be strictly observed; when itis '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.

Q114 Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

**Sol. 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 ofthe 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.

Q115 Explain how 'Dictionary Definitions' can be of great help in interpreting/constructing an Act when the statute is ambiguous.

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

Q116 Preamble does not over-ride the plain provision of the Act. Comment. Also give suitable example.

**Sol. 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" [Gullipoli Sowria Raj vs. Bandaru Pavani, (2009)1 SCC714].

Q117 At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

**Sol.** 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 not only ancient but even recent statutes in India.

118 When can the Preamble be used as an aid to the interpretation of a statute?

**Sol.** 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

Q119How 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.

**Sol.** 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

## Chapter 15 – FEMA, 1999

Q120 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?

**Sol**. 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 Authorized Person as defined in Section 2(*c*).

Q121 State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(iii) 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.

(iv) 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?

**Sol**. **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.

Q122 Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

(v) M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.

(vi) P requires U.S. $ 2,000 for payment related to call back services of telephones.

**Sol**. 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,

(vii) 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.

(viii) 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.

Q123 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?

**Sol**. **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 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India. However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Q124 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)?

**Sol**. (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.

Q125 Explain the meaning of the followings terms as defined under the Foreign Exchange Management Act, 1999:

(i) Authorised person

(ii) Currency

**Sol. (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.