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Scanner Appendix

CA Inter Group - I

(Solutions of May - 2023
and Questions of November - 2023)

Paper - 2 : Corporate and Other Laws

Part - I Corporate Laws

Chapter - 1 : Preliminary

2

Definitions

2023 - May [4] (a)

Answer:

A company which is a sub of a company not being a private company, shall be deemed to be a public company even where such subsidiary company continues to be a private company in its articles.

A small company means a company other than public company whose:

1. Paid-up share capital of which does not exceed ₹ 4 crores and
2. T/o of which as per its last profit & loss account immediately preceding F.Y. does not exceed ₹ 40 crores.

Fact:

H Ltd. is a holding of S Ltd. As per P & L for 31.3.22 of S Pvt. Ltd. its turnover was ₹ 1.80 crores & paid-up share capital was ₹ 80 lakhs. The BOD wants to avail the status of small company.

Conclusion:

Yes, the contention of CS is correct. As per given fact, S Ltd. is sub company of H Ltd. So, S Pvt. Ltd. shall be deemed to be a public company & hence, can't be categorized as a small company.

Chapter - 2 : Incorporation of Company and Matters Incidental Thereto

18

***Subsidiary Company not to hold shares
in its Holding Company (Section 19)*****2023 - Nov [1] {C} (a)**

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

- (i) Whether ABC Limited is a subsidiary of MNP Limited?
- (ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023? (5 marks)

5

***Formation of Companies with Charitable
Objects (Section 8)*****2023 - Nov [3] (a)**

A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013.

(5 marks)

Chapter - 3 : Prospectus and Allotment of Securities

4

Mis-statement in Prospectus**2023 - May [5] (a)****Answer:**

Where a person has subscribed for securities of a company acting on any misleading statement included in the prospectus 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.

Fact:

MBL Pharmaceutical Ltd. is focusing on oncology therapeutics and other generics with a vision to be Global Leader in oncology. The prospectus issued by company contained extracts of the expert's report on research by oncology deptt. The Report was found untrue. Mr. Diwakar purchased the shares on the basis of expert's report.

Conclusion:

Mr. Diwakars purchased the shares on the basis of the expert report published. Mr. Diwakar can claim compensation for any loss on damage that he might have sustained from the purchase of shares.

Circumstances when an expert is not liable for any mis-statements in the prospectus:

- (i) Under section 26 (5): It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or
- (ii) Under section 35 (2) (b): It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
- (iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
- (iv) Under section 35 (2) (c): As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract

from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

5***Allotment of Securities by Company*****2023 - Nov [5] (a)**

The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ ₹ 100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31st July, 2022. Instead, during this interim period, the Company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the Company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company. (5 marks)

Chapter - 4 : Share Capital and Debentures**6*****Issue of Shares at a Premium or Discount
(Sections 52 and 53)*****2023 - May [1] {C} (a)****Answer:**

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

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

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

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

- (a) the issue is authorised by a special resolution passed by the company;
- (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

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

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

Fact:

Innovative Ltd. is start-up company. The company decided to issue 30% sweat equity shares to a class of directors and permanent employees, lock-in period will be 5 years. For this purpose, a resolution in general meeting of the company was passed. Capital structure of company.

Authorized Capital = ₹ 10 Crores

Issued, sub & paid-up shares capital = ₹ 5 Crores

Share premium = ₹ 1 Crore

General Reserve = ₹ 3.52 Crores

P & L A/c = ₹ 1.58 Crores

Conclusion:

- (i) As per given fact, the issue size of sweat equity shares is appropriate as Innovative Ltd. is a start-up Company & for start-up company the limit for issuing sweat equity shares is 50% of its paid-up shares capital. In the given question, such limit is 30% which is within limit.

- (ii) As per given fact, the lock-in period is not justifiable. As the lock-in period is 3 years from the date of allotment. In the given question, the lock-in period is set for 5 years, which is not justifiable.

11***Debenture (Section 71)*****2023 - Nov [5] (Or) (a)**

What are the requirements outlined in the Companies Act, 2013 regarding the appointment of a 'Debenture Trustee' by a company? Can the following entities be designated as a 'Debenture Trustee':

- (i) An investor who holds advantageous stake.
- (ii) A lender to whom the company has a debt of only ₹1,000.
- (iii) An individual who has provided a guarantee for the repayment of the debenture amount issued by the company. (5 marks)

10***Alteration of Share Capital (Sections 61 to 70)*****2023 - May [5] (Or) (a)****Answer:****Conditions for bonus shares:**

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of-

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- (a) it is authorised by its Articles;
- (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

- (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (d) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (e) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (f) it complies with such conditions as 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.

Fact:

Paid-up share capital = ₹ 2,00,00,000

Amt. required for issuing Bonus shares = $2,00,00,000 \times \frac{1}{2} = ₹ 1,00,00,000$

Free Reserves = ₹ 50,00,000

Sec. Premium = ₹ 25,00,000

CRR = ₹ 25,00,000

Conclusion:

In the present case, the company may proceed for bonus issue after following above conditions. Also, the amount required for the bonus issue can be taken from free Reserves, Securities Premium Account & CRR.

Chapter - 5 : Acceptance of Deposits by Companies

1

Certain Important Terms Explained

2023 - May [4] (b)

Answer:

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

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

Fact:

Mr. Raj is an employee of DSP Trading Pvt. Ltd. as per his contract of employment, his annual salary is ₹ 5 lakhs. Mr. Raj paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit.

Conclusion:

As per given facts, the amount in the nature of non-interest bearing security deposit is ₹ 5,30,000, which is more than the annual salary of Mr. Raj i.e. ₹ 5 lakhs. Hence, the amount of ₹ 5,30,000 shall be considered as a deposit.

4

Provisions Regarding Acceptance of Deposits from public by eligible Companies (Section 76)

2023 - Nov [4] (c)

WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of ₹ 25 crores. According to financial results of the company as on 31.3.2022 net worth of the company was ₹ 120 crores and turnover for the year 2021-22 was ₹ 350 crores. The Company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of 1.5 crores from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty four months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. Seth affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

- (i) Whether Company was eligible to accept deposit from public?
What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by Company was in accordance with provisions of Companies Act, 2013 ?
- (ii) With reference to the loan advanced by Mr. Seth to Company, state whether the same is to be classified as a deposit or not? (4 marks)

Chapter - 6 : Registration of Charges

2***Duty to Register Charges, Etc. [Section 77]***

2023 - May [5] (b)

Answer:

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction. Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

Fact:

City Baker obtained a term loan of ₹ 1,00,00,000 from DNB Bank Ltd. The loan was granted by bank by creating a charge on one of its office buildings and charge was duly registered within 20 days from the date of creation of charge.

Conclusion:

Any person requiring such office building on which City Banker Ltd. get the charge registered, such person shall be deemed to have a notice of such charge from the date of registration.

Extension of time limit for registration of charge:**1. Charges created before 2nd Nov, 2018:**

- If a charge is created before 2nd Nov, 2018 but was not registered within of 30 days, the Registrar may application by the Company allow such registration within a period of 300 days of such creation on payment of additional fees.
- If the charge is not registered within extended period of 300 days, it shall be done within 6 months from 2nd Nov 2018 on the payment of prescribed additional fees.

2. Charges created on or after 2nd Nov 2018:

- If charge created on or after 2nd Nov 2018 but not registered within 30 days, the Registrar on application made by the Company allow such registration to be made within a period of 60 days of such creation.
- If the charge is not registered within extend period a above, the Company make application to Registrar to empowered to be made within further period of 60 days after the payment of fees.

Chapter - 7 : Management and Administration**4*****Proxies [Section 105]*****2023 - May [2] (a)****Answer:**

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

Fact:

A General Meeting of ABC Pvt. Ltd. was scheduled on 15th.4.2022 at 3:00 pm. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and proxy forms duly filed should be sent to Co. Mr. X a member appoints Mr. Y as his proxy and the proxy from date 10.4.22 was deposited. Mr. Y with Co. at its registered office on 11.4.22. Similarly, another member Mr. W also gives 2 separate proxies to two individual name Mr. M & N. In the case Mr. M the proxy date 12.4.22 was deposited with Co. on the same day and proxy form in favour of Mr. N was deposited on 14.4.22. All proxies, Y, M & N were present before meeting.

Conclusion:

In the present case, the proxy of Mr. X would be allowed to attend & vote on behalf of Mr. X. As regards to proxies of Mr. W, only M would be allowed as the form deposited 48 hours before the meeting but the proxy form of Mr. N was deposited on 14.4.22, which is only 24 hrs before meeting. Hence, Mr. N would not be allowed to attend the meeting. Mr. Y and Mr. M would be allowed to represent as proxies for Mr. X & Mr. W.

2***Annual Return [Sec. 92-94]*****2023 - Nov [2] (a)**

Wills Pvt. Ltd. convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face? (4 marks)

9**General Meetings****2023 - Nov [3] (d)**

Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022-23 as under:

- (i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.

Advise the Company on the feasibility of the above with reference to the provisions of Companies Act, 2013. (4 marks)

1**Registers****2023 - Nov [4] (d)**

Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of ₹ 1,000 crores. According to financial statements as on 31st March, 2023, paid-up capital of company was ₹ 600 crores and free reserves were ₹ 650 crores. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.

MCL is planning to expand its existence throughout the country. For this purpose, Company has taken ₹ 200 crores term loan and ₹ 125 crores of Working Capital loan from Banks on 18th June, 2023. Charge was created on all the assets of company on that day for above loan of ₹ 325 crores, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days

to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.

MCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22nd August, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plan.

With reference to provisions of Companies Act, 2013, answer the following questions:

- (i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?
- (ii) Which type of Charge was created by Company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of Companies Act, 2013 ?
- (iii) Whether the notice given to convene AGM at shorter notice was in compliance of Companies Act, 2013? (5 marks)

Chapter - 8 : Declaration and Payment of Dividend

3

Provisions Regarding Declaration and Payment of Dividend

2023 - May [1] {C} (b)

Answer:

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

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

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

Fact:

ESPN Heavy Engineering Ltd. has declared dividend in immediately preceding 3 F.Y. at rate of 15%, 20% & 25%. The Company has incurred losses in current F.Y. & declared the interim dividend of 10% on equity shares during the F.Y. 2021-22.

The BOD of the Company approved the financial results for F.Y. 21-22 in its meeting held on 5th Aug. 22 & recommended a final dividend of 15% of this board meeting.

The shareholders demanded that final dividend should not be less than 20%. But, the CS emphasized that final dividend can't be increased.

Conclusion:

- (i) As per the given case, the company can declare interim dividend even in case of loss in current F.Y., but the rate of dividend shall not be more than 20% $[(15\% + 20\% + 25\%)/3]$. Since company declared interim dividend at rate of 10%, the rate is within limits.
- (ii) Yes, the CS is correct. The rate of final dividend recommended by BOD can't be increased by the shareholders. So, the rate of final dividend of 15% recommended by the board can't be enhanced.

Chapter - 9 : Accounts of Companies

4

Re-opening of Accounts on Court's or Tribunal's orders [Section 130]

2023 - May [2] (b) (i)

Answer:

Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for re- opening of accounts—A company shall re-open its books of account and recast its financial statements, on an application made by the Central Government, or other competent authorities as prescribed under section 130 (1) of the Companies Act, 2013 to the NCLT to the effect that—

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Fact:

A fraud was reported by SFIO by Statutory Auditors of PQ Ltd. in current F.Y. 21-22. A competent authority observed during the investigation that there is a need to re-open the account of PQ Ltd. for F.Y. 15-16. Filed an application before NCLT to issue the order against PQ Ltd. for re-opening of its accounts and recasting the F.S. for 2015-16.

Conclusion:

In the given case, an application was filed for re-opening and re-casting of the F.S. of PQ Ltd. for F.Y. 2015-16. The application filed to NCLT for re-opening & recasting of F.S. for period earlier than 8 years i.e. 15-16 is valid.

8

Corporate Social Responsibility [Sec. 135]

2023 - Nov [1] {C} (b)

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorised share capital of ₹ 300 crores divided into 30 crore equity shares of ₹ 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was ₹ 200 crores divided into 20 crore equity shares of ₹ 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures—

Particulars	Amount (₹) crores
Free reserves created out of profits	200
Securities Premium Account	70

Credit balance of Profit & Loss account	60
Reserves created out revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during the financial year 2022-23 was ₹ 700 crores and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was ₹ 4 crores.

The Board of Directors of the company consists of the following directors:
CA 'R.C Goel' as the Managing Director

'Rudra Mittal' and 'Pragya' as independent directors

'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors

Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of following members:

CA 'R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility.

The company proposed a list of activities of spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

- (I) The CSR project for the benefit of employees of the company and their families only.
- (II) A contribution of ₹ 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.
- (III) A contribution to the PM CARES Fund during Covid pandemic.
- (IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of Companies Act, 2013 and the applicable Rules therein answer the following questions:

- (i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only ₹ 700 crores?

- (ii) Advise the company, how many members are eligible to be part of Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?
- (iii) Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? (6 marks)

11***Internal Audit [Sec. 138]*****2023 - Nov [2] (b)**

PQR Private Limited operates as a manufacturing company, generating a turnover of ₹ 150 crores and holds an outstanding loan of ₹ 75 crores from a public financial institution solely in the previous financial year (with a total loan availed of ₹ 110 crores, but ₹ 35 crores were repaid during the same year). The company's Board has delegated the authority to CEO to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Secretary of the company Mr. A as an internal auditor? (6 marks)

8***Corporate Social Responsibility [Sec. 135]*****2023 - May [3] (a)****Answer:**

- (i) **Correctness of the contention and required calculations:** 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 (CSR) of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, “Net worth” in the light of the provided particulars calculated as ₹ 520 crore [aggregate value of the paid-up share capital (₹ 200 crore), all reserves created out of the profits (₹ 200 crore), securities premium account (₹ 80 crore) and debit or credit balance of the profit and loss account (₹ 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off (₹ 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation], Turn over given as ₹ 800 crore and Net profits ₹ 4 crore. Since the net worth is not less than ₹ 500 crore section 135(1) is attracted.

- (ii) **Correctness of constitution of CSR Committee:** As per requirement, Corporate Social Responsibility Committee of the Board shall be consisting of three or more directors, out of which at least one director shall be an independent director.

Conclusion:

- (i) Yes, the contention of Praveen, the Company Secretary is correct w.r.t the constitution of CSR Committee as per the compliance of requirement of Section 135 of the Companies Act, 2013.
- (ii) Decision that Mohan Singh, Venkatesh, Isha and Bhavna (Independent Director) will be the members of CSR Committee, is correct.

Chapter - 10 : Audit and Auditors

6

***Auditors not to Render Certain Services
[Section 144]***

2023 - May [2] (b) (ii)

Answer:

- (i) **According to section 144 of the Companies Act, 2013**, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the Audit Committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

(ii) **Consequences as regards to Audit firm****Liability of Audit firm [Section 147(5)]:**

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Fact:

SSR & Company while conducting the audit for F.Y. 21-22, find out some manipulative entries in books of ASR Ltd. Auditor told that MD that internal control system of company is not reliable. The BoD of ASR Ltd. requested the auditors to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company but the auditors refused to take the assignment.

Conclusion:

In the present case, the service of designing and implementation of suitable financial information system to be given by statutory auditor is strictly prohibited. If the auditor of SSR & Company had accepted the assignment, then they would be punishable under sec. 147 of the Act.

2***Removal and Resignation of Auditors and Giving of Special Notice [Sec. 140]*****2023 - May [3] (b)****Answer:**

- (i) **Special Notice:** As per Section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

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

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

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

- (ii) **Representation to members:** Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —
- (1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - (2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Fact:

L Ltd. having 2,000 members with paid-up capital of ₹ 1 cr. decided to hold its AGM on 21.8.22 & received a notice on 2nd.7.22 from its 50 members holding paid-up capital of ₹ 6 lakhs, in aggregate for resolution to be passed at AGM for appointing Dawar & Company as its auditor from F.Y. 22-23 onwards, instead of its existing auditor, SNS & Company which was

originally appointed for 5 yrs and completed its 3 yrs. such notice for resolution was sent by Company to SNS & Company which gave written representation along with request for notification to members.

Conclusion:

- (i) As the members who gave notice held more than ₹ 5 lakhs in paid-up capital, they were eligible to give such notice.
Further, the notice should have been given not earlier than 3 months but at least 14 days before date of meeting 21.8.22, and the notice was given on 2.7.22. i.e. within the prescribed time limit.
- (ii) In the present case, L Ltd. received the representation made by SNS & Company and the Company is not bound to such representation to its members. Accordingly, L Ltd., apart from giving to right to be heard orally to SNS & Company, shall also make the representation read out at AGM, if so required by SNS & Company, and shall also file such representation with the Registrar, respectively.

3

***Eligibility, Qualifications and Disqualifications
of Auditors [Sec. 141]***

2023 - Nov [5] (b)

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

- (i) "Ms. Rekha," a practicing Chartered Accountant, and "Mr. Alok," who happens to be a spouse of "Ms. Rekha," holds securities of "Charcoal Ltd." valued at a face amount of ₹ 85,000 (with a market value of ₹ 75,000/-). The directors of Charcoal Ltd. are considering the appointment of Ms. Rekha as an auditor for the company.
- (ii) Mr. Puri, a practicing Chartered Accountant, has a debt of ₹ 7 lakhs owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of Mr. Puri as an auditor for the company.
- (iii) Ms. Komal, the real sister of Mr. Sharad, a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of Mr. Sharad as an auditor for the company.

(6 marks)

Part - II Other Laws**Chapter - 1 : The General Clauses Act, 1897****6*****General Rules of Construction (Sections 5-13)*****2023 - May [4] (c)****Answer:**

Where, any Central legislation on any regulation made after the commencement of this Act repeals any Act made or yet to be made unless another purpose exists, the repeal shall not:

1. Revive anything not enforced or prevailed during the period at which repeal is effected or,
2. Affect the prior mgt. of any legislation
3. Affect any claim, privilege, responsibility or debt obtained
4. Affect any punishment, forfeiture or penalty
5. Affect any inquiry, litigation or remedy.

9***Miscellaneous (Sections 25-30)*****2023 - May [5] (d)****Answer:**

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

In the case of state of *M.P v V.R Agnibotri*, it was held that when there are two alternative changes in the same trial e.g. Sec. 409 of the Indian Penal Code & Sec. 5(2) of the prevention of corruption Act, the fact that the accused is acquitted of the one of the change will not bar his conviction on the other.

Chapter - 2 : Interpretation of Statutes

4

Internal Aids to Interpretation/Construction

2023 - May [3] (d)

Answer:**Preamble:**

The preamble express the scope, object and purpose of the Act more comprehensively. The preamble of a statue 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.

In short, the preamble of an Act disclose the primary intention of the legislature but can only be brought in as an aid to construction if the language of the state is not clear. However, it cannot override the provision of the enactment.

3

Rules of Interpretation / Construction

2023 - May [4] (d)

Answer:

Usage or practice developed under the statue is indicative of the meaning recognized in its words by contemporary opinion. A notorious uniform practice continued under an old statue and the inaction of the legislative to amend the same are important factors to show that the practice so followed was based on a correct understanding of law.

In this connection, we have to bear in mind two latin maxims:

1. *Optima legum interpres est consuetude*
2. *Contemporanea Expositio est optima et fortissinia in lege.*

Therefore, the best interpretation of a statute on any other document is that which has been made by the contemporary authority.

2023 - Nov [2] (c)

While interpreting the statutes what will be the effect of 'Usage' or 'Customs and Practices'?

(3 marks)

2023 - Nov [3] (b)

A clause that begins with the words "notwithstanding anything contained" is a clause, that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them. (4 marks)

2023 - Nov [5] (c)

Define the concept of "Doctrine of Noscitur a Sociis" with example in accordance with the provisions of the Interpretation of Statutes.

(3 marks)

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