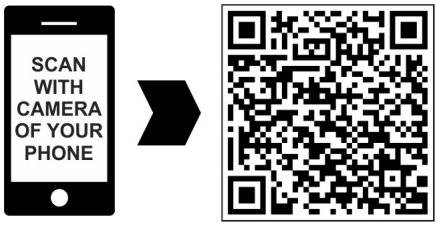
1 CORPORATE LAWS INCLUDING COMPANY LAW



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PRACTICAL QUESTIONS

2012 - June [5] (c) Amulya Ltd. has received an application for transfer of 1,000 equity shares of ₹ 10 each fully paid-up in favour of Amar. On scrutiny of the application form, it was found that Amar is a minor. Advise the company regarding the contractual liability of a minor and whether shares can be allotted to Amar by way of transfer. **(4 marks)** ***[CSPP P-1]***

Answer :

Under Companies Act, does not provide any qualification for membership. Membership entails an agreement enforceable in a Tribunal of law. Hence, the contractual capacity as envisaged by the **Indian Contract Act, 1872** should be taken into consideration.

It was held in the case of ***Mohiri Bibi vs. Dharmadas Ghosh*** that since minor is not competent to contract, he cannot become a member of a company. In India, a contract with a minor is absolutely null and void. A minor can become a member of a company in respect of fully paid shares only, provided he acquires them by way of transfer or transmission.

*In the given case, M/s Amulya Ltd. can give membership to the minor through **1000 shares**, received by way of transfer, because the shares are fully paid-up and no further liability is attached to this.*

Space to write important points for revision

2012 - June [6] (a) The articles of association of a listed company has fixed payment of sitting fee for each meeting of directors subject to a maximum of ₹ 1,00,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 1,25,000 per meeting. As a Company Secretary, advise the company about the requirements under the Companies Act, 2013 to give effect to this proposal. **(6 marks)** ***[CSPP P-1]***

(b) What is meant by compoundable and non-compoundable offences? State whether the following offences are compoundable or non-compoundable also mentioning the authority which can compound the offence in case of compoundable offences :

(i) Failure to hold an annual General Meeting of the company.

(ii) Failure to file copies of financial statements with the Registrar of Companies.

(iii) An officer of a company who inspite of Tribunal's order to vacate the company's property, continues to occupy the same.

(iv) Non-distribution of dividend to the members within the prescribed time. **(6 marks)** ***[CSPP P-1]***

Answer :

(a) Sitting fees to Directors for attending the meetings [Section 197(5)]

The Central Government through rules prescribed that the amount of sitting fees payable to a Director for attending meetings of the Boards or Committees thereof may be such as may be decided by the Board of Directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lakh per meeting of the Board or Committee thereof. The Board may decide different fee payable to independent and non-independent Directors other than whole time Directors.

Any increase in the sitting fee will require amendment of relevant provision of the Articles of Association. In the given case, the proposed sitting fee of ₹ 1,25,000 will require approval of the Central Government as the same exceeds the prescribed limits.

(b) Offences to be Non – Cognizable (Section 439):

All offenses are non-cognizable except offenses referred to SFIO

Every offence under this Act except the offences referred to in **Sub – Section (6)** of **Section 212** (**Section 212** deals with investigation of offences by SFIO, which is discussed elsewhere in this lesson) shall be deemed to be non – cognizable within the meaning of the said code.

When Tribunal can take cognizance of any offence?

No Tribunal shall take cognizance of any offence under this Act except on the complaint of –

(a) the Registrar in writing,

(b) a shareholder of the company,

(c) a person authorised by the Central Government.

The Tribunal may take cognizance of offences relating to issue and transfer of securities and non – payment of dividend on complaint in writing by a person authorised by the Securities and Exchange Board of India.

When the complainant is the Registrar or a person authorised by the Central Government, the presence of such officer before the Tribunal trying the offence shall not be necessary. The Tribunal may require personal attendance of these complainants at the trial.

Compounding of Offences (Section 441)

(1) Any offence punishable (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed twenty five lakh rupees, may, be compounded by the Regional Director;

(2) Any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence exceeds five lakh rupees, may, be compounded by the Tribunal;

(3) The offences which are punishable with Fine or Imprisonment; fine or Imprisonment or with both may be compoundable with the permission of Special Tribunal.

(4) Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

Note: *Offences may be compounded by*
- *Regional Director*
- *National Company Law Tribunal*
- *Special Tribunal*

Space to write important points for revision

2012 - June [8] (c) The principal business of Grow Fast Ltd. was the acquisition of vacant plots of land and to build/erect houses. In the course of transacting the business, the Chairman of the company acquired the knowledge of arranging finance for the development of land. Grow Fast Ltd. introduced a financier to another company Ajay Ltd. and received an agreed fee of ₹ 2 lakh for arranging the finance. The memorandum of association of the company authorises the company to carry on any other trade or business which in the opinion of the Board of directors can be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 2013, examine the validity of the contract carried out by Grow Fast Ltd. with Ajay Ltd.

(4 marks) ***[CSPP P-1]***

Answer:

The principal business of Grow Fast Ltd. was acquisition of vacant plots of land and to build houses. The company had entered into contract for arranging finance for the development of land to the company Ajay Ltd.

The company can do so after making alteration to the MOA as per **Section 13 of the Companies Act, 2013.** Provides that alteration in the provisions of Memorandum by passing a special resolution in General Meeting.

Hence, the contract is not valid until alteration of Memorandum as suggested above.

Space to write important points for revision

2012 - Dec [1] {C} Draft the following. In case of a resolution, state the type of meeting to consider such resolution and the nature of the resolution together with any special requirement attached to it. In respect of the rest, mention (a) who can issue the same; and (b) the basis for the issuance:

(i) Investment in the equity of MNO Ltd., which is a subsidiary of the investing company where the investing company already holds 68% of the equity of the investee company and wants to bring it to 85% of the equity by acquisition of the equity shares of other holders of such shares by private agreement. This acquisition will take the investing company's inter-corporate investment, loan, guarantee, etc., to a level exceeding 150% of the paid-up share capital and free reserves of the investing company whose free reserves constitute 30% of the paid-up capital representing equity and preference shares issued by the company. **(5 marks)** ***[CSPP P-1]***

Answer:

Type of Meeting : General Meeting

Type of Resolution: Special Resolution as this investment is not falling in category of exempted investment and is exceeding the limits specified in **Section 186 of the Companies Act, 2013**.

Resolution

"Pursuant to **Section 186** read with **Section 179 of the Companies Act, 2013,** and if any other applicable provision of Companies Act the Board of Directors of the company is hereby authorized to acquire.....equity shares of ₹ **10** each, aggregating of ₹ .....at an amount of ₹ .....with a premium of **20%** in MNO Ltd., a subsidiary of the company, from MNO Ltd., which held these shares, by a private purchase agreement, a draft of which was placed before the meeting.

The Board of Directors of the company is hereby authorized to do all such things including acts, deeds, etc. as would be considered by it as necessary/expedient in the circumstances of the investment."

Space to write important points for revision

2012 - Dec [1] {C} Draft the following. In case of a resolution, state the type of meeting to consider such resolution and the nature of the resolution together with any special requirement attached to it. In respect of the rest, mention (a) who can issue the same; and (b) the basis for the issuance:

(iv) Notice from an unlisted public company for holding an extra-ordinary General Meeting for consideration of the Board's proposal to buy-back 15% of the paid-up equity share capital (no explanatory statement is required). **(5 marks)** ***[CSPP P-1]***

Answer:

Who can issue - The notice can be issued by the Secretary of the Company, if so authorized by the Board or by a Director authorized by the Board.

Basis - **Section 68 of the Companies Act, 2013.**

SPECIMEN OF NOTICE OF GENERAL MEETING

NOTICE

Notice is hereby given that the Extraordinary General Meeting of the XYZ Limited will be held on _____, 2013 at 11.00 a.m. at the registered office of the Company at Mumbai to consider and if thought fit, to pass the following resolution as a SPECIAL RESOLUTION, with or without modification.

"**RESOLVED THAT** pursuant to the provision of **Sections 68, 69, 70** and all other applicable provisions, if any, of the **Companies Act, 2013**, and the provisions contained in the Private Limited Company and Unlisted public Limited Company (Buy-Back of Securities) Rules, 2014, prescribed by the Ministry of Corporate Affairs including such modifications or re-enactment of the Act or the Rules and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions and modifications as may be prescribed while granting such approvals, permissions and sanctions which may be agreed by the Board of Directors of the Company, the consent of the Company be and is hereby accorded to the Board to purchase its own equity fully paid-up equity shares of ₹ **100/-** each upto a maximum of **20,082** equity shares of ₹ **100/-** each being **15%** of the paid-up equity share capital of the Company to be bought back from the existing shareholders of the Company at a price of ₹ **625/-** per share payable in cash.

RESOLVED FURTHER that the Directors of the Company be and are hereby authorized to carry out the aforesaid buying back of securities and to take every step that may be necessary in connection therewith or incidental thereto give effect to the above resolution or to accept any change or modification as may be suggested by the appropriate authorities or advisors.

Mumbai
2013

By Order of the Board
Mr. A
Director

Space to write important points for revision

2012 - Dec [6] (c) MR. ADAM a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2012 in the last Annual General Meeting of the company.

Mr. Adam seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013:

(i) Specify the steps to be taken by Mr. Adam and the company in his behalf;

(ii) Draft a suitable resolution to be passed for removal of MD;

(iii) Is it necessary to state reasons to support the resolution for his removal? **(3 + 2 + 1 = 6 marks)** ***[CMA PAPER - 13]***

Answer:

(i)
- Under **Section 169 of the Companies Act, 2013**, a company may, by ordinary resolution, remove a director before the expiry of his tenure.
- For the purpose, special notice from a shareholder **(Mr. Adam in the present case)** shall be required to be given to the company for moving a resolution to remove a director.
- On receipt of notice, the company shall forthwith send a copy thereof to the director concerned **(MD in the present case)** and he shall be entitled to be heard on the proposed resolution at the meeting.

- Copy of the representation, if any, made by the director be also sent to all members of the company to whom notice of the general meeting is normally sent.
- In case, the representation is received too late, the same shall be read at the meeting. The representation need not be sent if the Company Law Board (now Tribunal) is satisfied that it will cause needless publicity for defamatory matter.
- Under **Section 115 (Resolution requiring special notice)**, special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

In the present case, if the AGM is due to be held, Mr. Adam may send the special notice 14 days before the AGM. He already holds more than 10% shares in the company. Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.

(ii) Mr. Adam may give special notice of his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr…….. Managing Director of the Company be and is hereby removed as a director of the company under **Section 169 of the Companies Act, 2013** with immediate effect."

(iii) A statement of reasons is not necessary to support the resolution for removal of a director. *LIC vs. Escorts Ltd .(2013) 59 Comp. Cases 548 (SC)*

Space to write important points for revision

2013 - June [6] (a) You being a Company Secretary, have been appointed as the Compliance Officer of your company which is proposed to be listed pursuant to an IPO with National Stock Exchange. State in brief your responsibilities with regard to insider trading, specially to facilitate a level playing field for public investors and shareholders of the company.

(8 marks) ***[CSPP P-1]***

Answer:

- According to the Model Code of Conduct for prevention of insider trading, every company to which the **SEBI (Prohibition of Insider Trading) Regulations, 2015** apply, has to appoint a compliance officer who is generally the Company Secretary of the company.
- He is then a link between the SEBI and the management or officers and employees of the company. He is required to report on the compliance status from time to time to the Managing Director/Chief Operating Officer and also periodically inform the Board.
- As the penal provisions of SEBI are very stringent, he is expected to keep a watch particularly during closed period or when trading window is closed with an objective of guiding directors/officers/designated employees of the company.

Role of Company Secretary in Compliance Requirements:

The obligations cast upon the company secretary in relation to insider trading regulations can be summarized as under:

1. The Company Secretary acts as Compliance Officer and ensures compliance with **SEBI (Prohibition of Insider Trading) Regulations, 2015** including maintenance of various documents.
2. To frame a code of fair disclosure and conduct in line with the model code specified in the **Schedule A** of the regulations and get the same approved by the board of directors of the company.
3. To place before the board the "minimum standards for Code of Conduct" to regulate, monitor and report trading by insiders as enumerated in the **Schedule B** of the regulations.
4. To receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter

   shall disclose its shareholding in the prescribed form within :
   - **30** days from these regulations taking effect or
   - **7** days of such appointment or becoming a promoter
5. To receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds ₹ **10**

lakhs with single or series of transaction in any calendar quarter in prescribed form within two trading days of :
- receipt of the disclosure or
- from becoming aware of such information

6. To ensure that no trading shall between **20th** day prior to closure of financial period and **2nd** trading day after disclosure of financial results.
7. The compliance officer shall approve the trading plan and after the approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
8. The Compliance Officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.
9. The compliance officer has to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the stock exchanges, where the securities of the company are listed.
10. To maintain confidentially list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre- clearance of trades.
11. To monitor of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.
12. To frame and then to monitor adherence to the rules for the preservation of "Price sensitive information".
13. To suggest any improvements required in the policies, procedures, etc. to ensure effective implementation of the code.
14. To assist in addressing any clarifications regarding the **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015** and the company's code of conduct.
15. To maintain a list of all information termed as 'price sensitive information'.
16. To maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.

17. To ensure that files containing confidential information shall be kept secured.

18. To keep records of periods specified as 'close period' and the 'Trading window'.
19. To ensure that the trading restrictions are strictly observed and that all directors/officers/designed employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company's securities during the period when the trading window is closed.
20. To receive and maintain records of periodic and annual statement of holdings from directors/officers/designated employees and their dependent family members.
21. To implement the punitive measures or disciplinary action for any violation or contravention of the code of conduct.
22. To ensure that the "Trading Window" is closed at the time of :
    (a) Declaration of financial results (quarterly, half-yearly and annual).
    (b) Declaration of dividends ("interim and final)
    (c) Issue of securities by way of public/right/bonus etc.
    (d) Any Major expansion plans or execution of new projects.
    (e) Amalgamation, mergers, takeovers and buy-back.
    (f) Disposal of whole or substantially whole of the undertaking.
    (g) Any change in policies, plans or operations of the company.
23. The Compliance Officer shall place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organization/firm.

Space to write important points for revision

2013 - Dec [1] {C} Attempt the following:

(iii) Board of directors of a listed company finds that some of its equity shareholders have not responded to the notice of the company calling

for payment of first and final call money of ₹ 5 per share on which ₹ 5 per share has already been paid-up. Your advice is sought to send a notice to those shareholders fixing a time-limit of 3 weeks from the date of the notice and cautioning them that if the company does not receive payment of calls-in-arrears within the period specified, their shares will be liable to be forfeited.

Draft a letter to be issued to the defaulting shareholders with the authority of the Board. **(5 marks)** ***[CSPP P-1]***

Answer :

Letter to Defaulting Shareholders Requiring them to Pay the First and Final Call Money within Stipulated Time

XYZ Limited
Regd. Off. Address
Ref. No..... *Dated: December, 26, 2013*
Registered Post with AD
Shri/Smt.....
Dear Shareholder,

Subject :1. Payment of the first and final call money of ₹ **5** per share due on.....equity shares of the company allotted to you.
2. Final notice before forfeiture

Pursuant to Articles.....and ..... of the Articles of Association of the company, and on the authority of the resolution of the Board of Directors of the company passed at its meeting held on **02 November, 2013**, notice was given to you requiring you to pay the first and final call money of ₹ **5** per share on all partly paid equity shares of the company, on or before the **2nd Day** of **December, 2013**.

It is observed that you have not yet paid the call money on.....Equity shares allotted to you even after the due date for which you are liable to pay interest @ **12%** per annum as per Article no.....of the Articles of Association of the company.

Under the authority of the Board of Directors of the company, you are hereby called upon to pay the said first and final call money of ₹ **5** per share

on .....equity shares allotted to you with interest @ 12% per annum amounting to ₹ .....on or before **16th Day** of **January, 2014** and in the event of non-payment on or before the day so named, the shares in respect of which the call was made are liable to be forfeited.

We trust you will honour your obligation under the Articles of Association of the company within the aforesaid date and avoid the inevitable consequence of forfeiture of your shares.

Thanking you,
Yours faithfully
for XYZ Limited
(Company Secretary)

Space to write important points for revision

2013 - Dec [1] {C} Attempt the following:

(iv) Board of directors of XYZ Ltd. having decided to get its shares listed on the Bombay Stock Exchange Ltd. and the National Stock Exchange Ltd., desires to include the requisite clauses in its articles of association for dematerialisation of shares and securities issued by the company. You are required to draft a notice convening an extraordinary general meeting of the company including suitable resolution with explanatory statement for this purpose.

(5 marks) ***[CSPP P-1]***

Answer :

XYZ Limited
Regd. Off. Address

Dated: December, 26,2013

Notice is hereby given that the Extraordinary General Meeting of the XYZ Limited will be held on Monday, the 27th January 2014 at 11.00 a.m. at the registered office of the Company at Mumbai to consider and if thought fit, to

pass, with or without modification, the following resolution as a SPECIAL RESOLUTION:

"RESOLVED THAT pursuant to **Section 14** of the **Companies Act, 2013**, the articles of association of the company be and are hereby altered in the following manner:

After article No...,the following be inserted as article No.....

Article ....Dematerialisation of Securities

(a) *Definitions*

(b) *Dematerialisation of Securities*

Notwithstanding anything contained in these articles, the company shall be entitled to dematerialise its securities and to offer securities in a dematerialised form pursuant to the **Depositories Act, 1996.**

(c) *Options for investors*

Every person subscribing to securities offered by the company shall have the option to receive security certificates or to hold the securities with a depository. Such a person who is the beneficial owner of the securities can at any time opt out of a depository, if permitted by the applicable law.

(d) Securities in Depositories to be in Fungible Form

(e) Distinctive Numbers of Securities held in a Depository

Nothing contained in the Act or these articles regarding the necessity of having distinctive numbers for securities issued by the company shall apply to securities held with a depository.

(f) *Rights of Depositories and Beneficial Owners*

(i) A depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of the beneficial owner.

(ii) Save as otherwise provided in (i) above, the depository as the registered owner of the securities shall not have any voting rights or any other rights in respect of the securities held by it.

(iii) Every person holding securities of the company and whose name is entered as the beneficial owner in the records of the depository shall be deemed to be a member of the company.

(g) *Service of Documents*
Notwithstanding anything to the contrary contained in the Act or these articles, where securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.

(h) *Transfer of Securities*
Nothing contained in **Section 56** of **Companies Act, 2013** or these articles shall apply to a transfer of securities effected by a transferor and transferee both of whom are entered as beneficial owners in the records of a depository.

(i) *Allotment of Securities Dealt in a Depository*
Notwithstanding anything contained in the Act or these articles, where securities are dealt in a depository, the company shall intimate the details thereof to the depository immediately on allotment and/or registration of transfer of such securities.

(j) *Register and Index of Beneficial Owners*
The register and index of beneficial owners maintained by a depository under the **Depositories Act, 1996**, shall be deemed to be the register and index of members and security holders for the purposes of these articles."

Space to write important points for revision

2013 - Dec [3] (b) A company declared dividend at an Annual General Meeting for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties on the ground that these assets were acquired as investment for the purpose of the earning supplementary income, though shown in the balance sheet under the head

"Fixed Assets", and not for the purpose of any business carried on by the company. If the company had provided depreciation on the said immovable properties, the company would have suffered loss for the financial year ended 31st March, 2013.

Answer the following in the context of the above and with reference of The Companies Act, 2013:

(i) Is it in order for the company to declare dividend for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties?

(ii) Is it possible for the Board of Directors of the company to revoke the dividend which has been declared at the Annual General Meeting?

(4 marks) ***[CMA PAPER - 13]***

Answer :

(i) According to **Section 127 of the Companies Act, 2013,** a company can declare and pay dividend only after making adequate provisions for depreciation as provided in the Act.

It is immaterial whether the assets are used for the purpose of business of the company or as investment for earning supplementary income so long as these assets are not intended for resale i.e. stock-in-trade.

As the provisions of **Section 127** are mandatory in nature, it is not in order for the company to declare dividend for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties. Further the financial statement for the financial year ended 31st March, 2013 cannot be said to show a true and fair view of the state of affairs.

(ii) Ordinarily a dividend once declared becomes a debt and cannot be revoked except with the consent of the shareholders, because the declaration of dividend creates a debt to the shareholders in whose favour it is declared.

But where a dividend has been declared illegally as in this case, the Board of Directors will be justified in revoking the declaration of dividend.

Space to write important points for revision

2013 - Dec [5] (a) A listed company having paid-up capital of ₹ 4.5 crore, not employing a Company Secretary, is in need of a compliance certificate in accordance with the proviso to Section Rule 8 of Companies Act, 2013. If you as a Practicing Company Secretary are approached to issue the compliance certificate, how will you go about the task of issue of compliance certificate to that company. What are the documents, records and information you will ask the company to produce for verification before issue of 'compliance certificate'. **(8 marks)** ***[CSPP P-1]***

Answer :

Before the issue of compliance certificate, the practicing company secretary must ensure that in case he is appointed for the first time, a board resolution has been passed in respect of his appointment or he is in possession of an engagement letter. In case he is being appointed in place of a Practicing Company Secretary who has issued the Compliance Certificate in the previous year, he shall send prior intimation to him as stipulated in the Code of Conduct of ICSI. Before issuance of compliance certificate, the practicing company secretary shall call for the following registers and records for his scrutiny:

(i) Register of members of the company;
(ii) Registers/records of all share transfers, transmission, duplicate share certificate issued by the company during the year for which the compliance certificate is to be issued;
(iii) Minutes books and attendance record of Board Meeting & General Meeting;
(iv) Register of directors, managing director, manager and secretary under **Section 170** of **Companies Act, 2013;**
(v) Register of contracts, companies and firms in which directors are interested under **Section 189** of **Companies Act, 2013;**
(vi) Register of directors' shareholdings under **Section 170** of **Companies Act, 2013**;
(vii) Register of charges under **Section 85** of **Companies Act, 2013;**
(viii) Register of loans and advances, investment under **Section 186** of **Companies Act, 2013;**
(ix) List of shares or debentures, if any, issued during the year;

(x) List of preference shares or debentures, if any, redeemed during the year;

(xi) List of shares purchased under the buy-back scheme under **Section 68** of **Companies Act, 2013;**

(xii) Copies of approvals, if any, received from the Regional Directors under **Section 188** of **Companies Act, 2013;**

(xiii) Memorandum and articles of association of the company;

(xiv) Certificate under **Section 164** of **Companies Act, 2013;** furnished by the directors of the company;

(xv) List of employees from whom security, if any collected by the company during the year;

(xvi) List of depositors & deposits showing the amount deposited, date of deposit, interest payment details and evidence of payment of interest & repayment of deposits on due dates;

(xvii) Newspapers showing the date of publication on book closures or record dates fixed during the year.

Space to write important points for revision

2013 - Dec [5] (c) A.K. Property Developers Ltd. engaged in the business of real estate and construction of commercial and residential complexes has been making very good progress and recorded double the profit for the year ended on 31st March, 2013 than the previous year. The company declared and paid 40% dividend to the shareholders for the previous year ended 31st March, 2012. The company having invested its funds heavily in acquiring land for future development finds it difficult to mobilise funds to pay dividend to shareholders. Managing Director of the company is planning to get the Board's approval for declaration of bonus shares out of the huge accumulated free-reserves of that company to satisfy the shareholders and thus manage the cash flow problem by skipping dividend. As the Secretary of the company, what will be your advice, if the Board of directors tends to decide in line with the Managing Director's proposal.

(4 marks) ***[CSPP P-1]***

Answer :

No dividend can be paid by a company except in cash. However, the prohibition against payment of dividend otherwise than in cash, is not deemed to prohibit the capitalization of profits or reserves. **[Section 123 of Companies Act, 2013].**

Under **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018**, a listed company is prohibited from issuing bonus shares in lieu of dividend. The SEBI Guidelines apply to listed companies.

Thus, if A.K. Property Developers Ltd. is a Listed Company, it is prohibited from issuing bonus shares, as it may tantamount to such an issue being in lieu of dividend.

To overcome this situation, it is suggested that a Board meeting be held to consider recommending a nominal dividend for the year ended March 31, 2013, recommend increase of authorized capital to accommodate the bonus issue (if necessary) and also the bonus issue. The recommendations would require approval of the members in general meeting.

After obtaining the approvals, the company is required to comply with the following:

1. Payment of dividend;
2. Arrange for payment of dividend complying with the provisions of **Section 123** of **Companies Act, 2013;**
3. Increase of authorized share capital;
4. File e-Form No. **PAS- 3** together with the copy of the resolution passed in general meeting for increase of authorized share capital and the altered Memorandum together with the differential fees for increase in authorized share capital;
5. For making Bonus issue:
   (i) File e-Form No. **MGT-14** in respect of resolution passed in general meeting with the Registrar of Companies within **30** days of the date of passing the resolution.
   (ii) Finalize the list of allottees and file e-Form No. **PAS- 3** with the Registrar of Companies within **15** days of allotment and issue share certificates to the allottees within **3** months from the date of allotment.

However, if A.K. Property Developers Ltd. is an unlisted public company, the above stated SEBI Regulations do not apply and consequently, the prohibition on issue of bonus shares in lieu of dividend is not applicable in their case.

Space to write important points for revision

2013 - Dec [6] (b) Examine whether the following transactions can be considered as a loan to a director requiring approval of the Central Government under Section 185 of Companies Act, 2013.

(i) A public company secures residential accommodation for the use of its managing director by entering into an arrangement under which the company has to deposit a certain amount with the landlord to secure compliance with the terms of the agreement.

(ii) A public company purchases a flat which is subsequently sold to a director at the prevailing market price out of which the director pays 50% immediately and contracts to pay the balance in 10 equal annual installments. **(4 marks)** ***[CMA PAPER - 13]***

(c) A was appointed director of the company in its annual general meeting. He took over the office and started acting on behalf of the company as its director. Subsequently it was found that the appointment of the director was not valid because in the meeting where he was appointed certain members who had voted were not qualified to vote and certain members had voted twice by mistake. There were also certain mistakes in the counting of the votes. As such, the appointment of the director was held to be invalid. Would the acts of A, done by him as director be valid and binding upon the company? **(3 marks)** ***[CMA PAPER - 13]***

Answer :

(b) (i) The deposit of the cost of purchase of the property cannot be regarded as a loan or advance to the M.D. or book debt attracting the provisions of **Section 185 of The Companies Act, 2013**. It is no concern of the M.D. on what terms the company secures premises for residential accommodation for him.

(ii) In a petition in Dr. Fredie Ardeshir Mehta *v.* Union of India the Bombay High Court came to the conclusion that a company selling

one of its flats to one of its directors on receiving half price in cash and agreeing to accept the balance in installments does not give a loan to the director. It is a credit sale. It cannot be described even as an indirect loan. In view of this decision, the transaction in question does not amount to a loan to a director requiring approval of the Central Government.

(c)
- Yes, According to **Section 176 (Defects in appointment of directors not to invalidate actions taken) of the Companies Act, 2013** all the acts of a director are valid notwithstanding the fact that his appointment is afterward discovered to be invalid, by reason of any default and defect in his appointment.
- This is to protect outsiders as well as members dealing with the company.
- In this case the defects in the appointment of the director were found out subsequent to his appointment.
- The director had no knowledge of the defects until he had started acting as a director.
- The validity of the acts of the director cannot be questioned just on the basis of irregularities subsequently discovered in the appointment of the director.
- All the acts done by director are valid and binding on the company.

Space to write important points for revision

2013 - Dec [7] (d) The Board of directors of Vir Ltd. declared an interim dividend for the second time during the financial year 2012-13. After declaration, the Board of directors decided to revoke the second interim dividend as they noticed that the company's financial position did not permit to declare second interim dividend. The Board of directors seeks your advice in the matter. As the Secretary of the company, advise the Board.

(4 marks) ***[CSPP P-1]***

Answer :

The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

The amount of dividend including interim dividend so deposited under **Sub-section (1A)** shall be used for payment of interim dividend.

A dividend when declared becomes a debt and a shareholder is entitled to sue for recovery of the same after expiry of the period of **30** days prescribed under **Section 127** of **Companies Act, 2013,** in *Re Severn and Wye & Severn Bridge Rly. Co. (1896) 1, Ch 559.* **Section 2(14A)** defines 'Dividend' to include interim dividend. Therefore, the interim dividend once declared becomes debt and payable within **30** days of declaration. A dividend including interim dividend once declared cannot be revoked, except with the consent of the shareholders.

Space to write important points for revision

2014 - June [1] {C} (c) An Audit Committee of a Public Limited Company constituted under Section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board however did not accept the recommendations. In the light of the situation, State whether:

(i) The Board is empowered not to accept the recommendations of the Audit Committee.

(ii) If so, what alternative course of action, would be Board resort to?

(iii) As a chairman of the Audit Committee, how would you respond to the situation? **(3 marks)** ***[CMA PAPER - 13]***

Answer:

(i) As per Section 177(Audit Committee), the Board's report under Section 134 shall disclose the composition of the Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefore.

(ii) If the Board does not accept the recommendation of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.

(iii) The chairman of the Audit Committee shall attend the Annual General Meeting(s) of the company to provide any clarifications on matters relating to Audit.

Amended made by Companies (Amendment) Act, 2017

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:

Provided further that in case of transaction, other than transactions referred to in Section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

Space to write important points for revision

2014 - June [2A] (Or) (ii) MNC Ltd. has on its Board 5 directors, out of which 4 directors are foreigners and they reside in Italy. The company wants to convene a Board meeting in Chennai on 1st June, 2014 while all the 4 directors residing in Italy are preoccupied and are not in a position to travel to India for the meeting. Advice the company. **(4 marks)** ***[CSPP P-1]***

Answer:

- The directors of a Company may participate in a meeting of Board/Committee of directors under the provisions of **Companies Act, 2013** through electronic mode.
- Electronic mode means video conference facility i.e. audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each

other without an intermediary and to participate effectively in the meeting.

- A director participating in a meeting through use of video conferencing shall be counted for the purpose of quorum.
- The minutes shall also disclose the particulars of the directors who attend the meeting through electronic mode.
- The meeting shall be deemed to be taken place where chairman is physically present.
- Therefore to convene board meeting in Chennai, **5th** director shall act as chairman and shall be physically present in Chennai.

Space to write important points for revision

2014 - June [2A] (Or) (iv) The Chairman of X Ltd. convened a Board meeting for which he sent a proper two weeks notice. Some of the members of the Board objected on the ground that no proper agenda for the meeting was circulated. They seek to question the validity of convening the meeting. Advise. **(4 marks)** ***[CSPP P-1]***

Answer:

The agenda is complied by secretary, possibly in collaboration with the Chairman or Managing Director. The law does not require an agenda for meetings of the Board to be sent. ***[Abnash Kaur v. Lord Krishan Sugar Mills Ltd. (1974) 44 Com Cases 390, 413 (Del)]*** Board of Directors can transact business even without a formal agenda ***[Sunil Dev v. Delhi & District Cricket Association, (1994) 80 Com Cases 174 (Del)]***. It is not necessary that an agenda for directors' meeting should be specified [***Maharashtra Power Development Corpn. Ltd. V. Dabhol Power Co., (2004) 120 Com Cases 560 (Bom)]***.

Space to write important points for revision

2014 - June [3] (a) Speed Ltd. wants to recruit Anil as the Managing Director of the company, while he is already the Managing Director of Sprint Ltd. Advise the company referring to the provisions of the Companies Act, 2013 and draft a suitable Board resolution for the appointment.

(4 marks) ***[CSPP P-1]***

Answer:

According to **Section 203** of the **Companies Act, 2013,** a public company may appoint a person as its Managing Director if he is already a Managing Director of only one other company. If such an appointment is made by a resolution passed at a duly convened and held meeting of the Board of Directors of the company, the resolution should have been approved nemine contradicente ("nobody contradicting") with the consent of all the directors present at the meeting and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

Board Resolution for appointment of a Person as Managing Director, who is Managing Director of another company

"RESOLVED THAT consent of all the directors present at the meeting be and is hereby accorded to the appointment of Shri....., who is Managing Director of Sprint Ltd. also, as the Managing Director of this company without any remuneration and the Managing Director shall exercise such powers and perform such functions as the Board of Directors may, from time to time require him to exercise and perform."

Space to write important points for revision

2014 - June [3] (b) Smart Ltd. has borrowed a term loan from Genius Bank based on a charge on its fixed assets and necessary charge filing has been done by the company with the Registrar of Companies. Advise the company, if any modification of charge is required to be filed in the following events:

(i) Genius Bank increased the interest rate from 12% p.a. to 13% p.a.

(ii) The term loan provided for interest rate to be charged at 2% over the bank rate notified by RBI. The bank rate has been revised from 8% to 9% by RBI and consequently, the interest rate increased from 10% to 11%.

(iii) The term loan provided for interest rate to be charged at 2% over the prime lending rate (PLR) fixed by Genius Bank. The PLR was revised by Genius Bank from 8% to 9%. **(4 marks)** ***[CSPP P-1]***

Answer:

A variation in the rate of interest payable on the loan amount by the borrowing company to the lending institution or the bank will constitute a modification of charge.

(However, it may be covered by the term of the original charge by adding the words "or such rates as may be charged from time to time").

However, if the rate of interest has been fixed on the loan documents, at a specified percentage above the bank rate as notified by the RBI, any change arising as a result of any variation in the bank rate would not amount to a change in the 'term' of the charge under **section 79** of **Companies Act, 2013** as such and hence in such a case no return need to be filed under the said section. In other cases of variation of rate of interest, **Section 79 would be applicable** required to be filed with the ROC, unless the change is consequent upon a change in the bank rate notified by the RBI **[Letter No. 8/6/81-CL-V dated 14th April, 1981].** Considering this:

- For the modification mentioned in **3(b)(i)**, filing of modification of charge is required.
- For the modification referred in **3(b)(ii)**, filing of modification of charge is not required, as it pertaining to revision of bank rate by RBI.
- For the modification referred to in **3(b)(iii)**, filing of modification of charge is required as it is the Genius Bank that has revised the PLR.

Space to write important points for revision

2014 - June [3] (d) Ganesh, who possesses valid share certificate of a company covering 1,000 equity shares is claiming title to the shares but his name is not recorded in the Register of members of the company. Ganesh also has the document evidencing the payment of call money against the above shares. But against the shares held by him, Suresh is recorded as a member in the Register of members. Advise the company on resolving the title dispute. **(4 marks)** ***[CSPP P-1]***

Answer:

- Under **Section 2(55)** of **Companies Act, 2013,** a person cannot be made a member unless his name is entered on the register as a member.
- If one is a member in the books of the company, it is he alone who would be entitled to exercise the rights of a shareholder, viz. to vote or to receive the dividend payable in respect of the share and it certainly follows that he alone is liable for share calls or to be put on the list of contributories in case the company is wound up.
- Although a member may be merely a trustee to the knowledge of the company, he is liable for calls and other obligations of his membership.
- ***[Murshidabad Loan Office Ltd. v. Satish Chandra Chakravarty (1943) 13 Com Cases 159 (Cal): AIR 1943 Cal 440].***
- Where the title to shares in question was in dispute, the appellant was directed to take necessary steps to establish his title first and then approach the NCLT. Upon the appellant getting the title established through the NCLT, the appeal filed under **Section 111** was allowed and the company was directed to register the transfer in the appellant's name. **[*Amar Nath Berry v. Orissa Textile Mills Ltd.* Appeal No. 21 of 1972]**

In another case, NCLT has prescribed certain tests to be applied in case of dispute as to title. NCLT has held that in case of a dispute as to whether the petitioner is a shareholder or not, when the name is not shown on the register of members; certain tests are to applied as to (1) whether the person is in possession of the original share certificates to claim the membership, (2) whether there are independent records to establish that he is a member of the company, (3) whether the company has treated the petitioner as a member of the company in the past. ***[In Banford Investment Ltd. v. Magadh Spun Pipe Ltd. (1998) 93 Com Cases 685 (NCLT)]***.

In the given case since Ganesh possesses share certificate and there is an evidence of call money payment also, his name may be entered in the register of members.

Space to write important points for revision

2014 - June [4] (a) Well Spun Synthetics Ltd. has made allotment of shares. It was completed on 18th February, 2014. The ten weeks' time-limit shall expire on 24th April, 2014? When would the liability of the company to refund the excess amount begin, 18th February, 2014 or 24th April, 2014? Discuss with the help of relevant case law. **(4 marks)** ***[CSPP P-1]***

Answer:

In ***Raymond Synthetics Ltd. v. Union of India (1992) 73 Com. Cases 1 (1991) 3 Comp L.J. 1 (Bombay DB),*** the decision of the Division Bench of the Bombay High Court was to the effect that liability to refund excess amounts would begin from the date of allotment if completed earlier than ten weeks because the excess amount having become known, there was no point in withholding its refund upto the expiry of ten weeks. Thus in the given case the liability of the company to refund the excess begin on 18th February 2014.

Space to write important points for revision

2014 - June [4] (b) The memorandum of a company contains investment activity as its main object. The company has diversified into other activities but continues to do business activities of investment in shares and securities. However, there is substantial reduction in its investment in shares and securities. With reference to Section 186 of the Companies Act, 2013, can the company continue to be regarded as investment company? Is income from business an important criterion here? Discuss with reference to relevant case law. **(4 marks)** ***[CSPP P-1]***

Answer:

- Income from business is not the criterion for judging whether a company is to be regarded as an investment company for the purposes of **Section 186** of **Companies Act, 2013.**
- The criterion should be as to what the principal business of the company is and the financial statement should show as to what the principal business of the company is.
- It was held in the case of ***Assistant Registrar v. Kothari (HC) (1992) 75 Comp Cas 688 (Mad): (1993) 10 CLA 80 (Mad),*** that where the company, whose memorandum contains investment activity as a main

object and whose principal business, even after diversification into other activities, continues to be investment in shares and securities, it will be regarded as an investment company, despite the fact that there is a reduction in investment in shares and securities.

Space to write important points for revision

2014 - June [4] (c) Indus Ltd. has changed its name. There is no alternation in the constitution or legal status of the company. The fact of alternation of name was not brought to the notice of the Tribunal. The company has the power to execute a decree in its old name. Has the company right to execute a decree in its new name after change of name? **(4 marks)** ***[CSPP P-1]***

Answer:

- In case of Indus Ltd., there is no alteration in the constitution or the legal status of the company.

- Even after the name of a company is altered by special resolution and sanction by the Registrar is accorded, the company continues to possess the same rights and is subject to the same obligations as existed before the change.
- Therefore, if a company has the power to execute a decree in its old name, it has a right after the change to execute the decree in its new name.
- The fact that alteration in the name was not brought to the notice of the NCLT would not in any manner render defective or irregular proceedings initiated by a company in its former name.
- A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name.
- The change of the name does not affect the rights of the company.
- It is not necessary that the new name should have been entered in the decree.

  [Abdul Qayum (FS) v. Manindra Land & Building Corporation Ltd. (1955) 25 Comp Cas 143 (All): AIR 1955 All 192]

Space to write important points for revision

2014 - June [4] (d) Beach SA, a company incorporated in France, wants to set-up a branch in India. Advise Beach SA, regarding provisions to be complied with. Will it make any difference if 50% of the paid-up share capital of Beach SA, is held by Indian citizens? **(4 marks)** ***[CSPP P-1]***

Answer:

Section 380 of Companies Act, 2013 lays down that every foreign company which establishes a place of business in India must, within **30** days of the establishment of such place of business, file with the Registrar of Companies at New Delhi and also with the Registrar of Companies of the State in which such place of business is situated:

(a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company; and if the instrument is not in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company;
(c) a list of the directors of the company and its secretary with full particulars of their names, nationality, their addresses and business occupations;
(d) the names and addresses of one or more persons resident in India who are authorised to accept service of process and any notices or other documents required to be served on the company; and
(e) the full address of the principal place of business in India.

Approval letter from Reserve Bank of India for the setting up of business in India is required to be attached.

*When **50%** of the paid up capital is held by Indian Citizens, they should comply with such of the provisions of the Act as may prescribed by Central Government with regard to the business carried on in India, as if it were a company incorporated in India.*

Space to write important points for revision

2014 - June [5] (a) Sprint Ltd., a listed company, wants to implement buy-back of shares. Its financials as at June, 2009 are as under:

Paid-up equity share capital (20,00,000 shares of ₹ 10 each)	: ₹ 200 lakh
Preference share capital (redeemable in December, 2024)	: ₹ 100 lakh
Free reserves	: ₹ 200 lakh
10% Debentures	: ₹ 200 lakh
Loans from IDBI	: ₹ 300 lakh

Compute the quantum of equity capital of the company eligible for buy-back of shares by citing relevant provisions of the Companies Act, 2013.

(4 marks) ***[CSPP P-1]***

Answer:

Quantum Eligible for Buy-back

25% of paid-up equity capital - **25%** of ₹ **200** lakhs i.e. ₹ **50** lakhs (Buy-back in a financial year cannot exceed **25%** of total paid-up equity capital) Post Buy-back-ratio as required under **Section 68 of Companies Act, 2013,** the ratio of the debt owned by the company is not more than twice the capital and its free reserves after such buy back.

2014 - June [5] (a) State your views on the following with reference to the provision of the Companies Act, 2013:

(i) Complex Ltd, a well reputed manufacturing Public Limited Company has made a contribution of ₹ 2.5 Lacs during the financial year ended, 31-03-13 to a political party for running a school, situated in the village, where most of the workers of the company reside. It is admitted that the benefit of the school is mostly for the children of the workers of the company. The company has not made any profits in the last four years. **(3 marks)** ***[CMA PAPER - 13]***

(b) Mr. Prasad is Managing Director of Bapi Ltd. He gave his resignation letter to the Chairman of the Board of Directors on 31st December, 2013, and requested that he should be relieved immediately. When does the resignation of Mr. Prasad take effect? **(3 marks)** ***[CMA PAPER - 13]***

(c) Advise the Board of Directors of a Limited Company regarding validity and extent of their powers, under the provisions of the Companies Act, 2013 in relation to the following matters :

(i) Buy-Back of the shares of the company, for the first time up to 10% of the paid up equity share capital without passing a special resolution.

(ii) Delegation of power to the Managing Director of the company to invest surplus funds of the company in the shares of some companies. **(2 + 2 = 4 marks)** ***[CMA PAPER - 13]***

Answer:

(a) (i)
- Section 182 of the Companies Act, 2013 deals with prohibitions and restrictions regarding political contributions.
- A non Government company which has been in existence for not less than three years may contribute any amount or amounts directly or indirectly to any political party or for any political purpose to any person provided that the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 7.5% of its average net profits determined in accordance with the provisions of Section 198 during the three immediately preceding financial years.
- The company in question has not made any profit in last four years and contributed ₹ 2.5 lacs during the year to a political party for running a school.
- This is violation of the provisions of Section 182 of the Companies Act although the children of its workers are benefitted. The auditor would have to qualify his report stating the contravention of the provision of the Companies Act.

(b)
- According to Section 168(Resignation of director), A director can resign from his office by serving a notice of his resignation upon the Company or the Board.
- There is no need for its acceptance by the Board or the Company.
- However, if a Managing Director resigns, he cannot give up his office at his pleasure simply by serving the notice.
- This is because he occupies two positions i.e., of a director and an employee.

- In case of Managing Director, the notice or letter of resignation is required to be approved or accepted by the company and he has to be relieved of his duties and responsibilities attaching to his office from which he has resigned.
- Similar views were accepted in the case of Achutha Pal *vs*. Registrar of Companies, (1956) 36 Comp. Cases 598.

*Accordingly, **in the given case,** the resignation of Mr. Prasad, the Managing Director shall be effective when approved or accepted by the company and he is relieved of his duties and responsibilities attaching to his office within a reasonable time.*

(c) (i)
- Section 68 (Power of a company to purchase its own shares) of the Companies Act, 2013 facilitates buy-back of shares upto 10% of the total paid up equity capital and free reserves.
- Hence, special resolution in general meeting of the company is not required. The proposed buy-back of shares is in order provided other conditions laid down in Section 68 of the Companies Act, 2013 are fulfilled.

(ii)
- Section 179 (Power of Board)of the Companies Act, 2013 empowers the Board of Directors to delegate to the Managing Director the power to invest in general terms.
- But Section 186 (Loan and investment by the company)of the said Act provides that no investment shall be made unless it is sanctioned by a resolution passed at a meeting of the board with the consent of all Directors present. Section 186 does not provide for delegation.
- Hence the proposed delegation of power to the Managing Director to invest is not in order.

Space to write important points for revision

2014 - June [6] (b) State the requirements related to filing of return of allotment. X Ltd. has reissued certain equity shares after completing the forfeiture procedure. Is X Ltd. required to file the return of allotment?

(4 marks) ***[CSPP P-1]***

Answer:

- According to **Section 39** of the **Companies Act, 2013** a company is required to file a return of allotment of shares and not for re-issue of forfeited shares.
- Allotment, as we have seen above, is appropriation of the previously unappropriated capital of a company, of a certain number of shares to a certain person. Till such allotment, the shares do not exist as such.
- However, in the case of forfeited shares, they had already been allotted any they had come into existence at the time of their allotment and their forfeiture is a proof of their existence.
- Therefore, no return of allotment is required to be filed with the ROC by a company at the time of re-issue or disposal of forfeited shares.
- **[*Sri Gopal Jalan and Co. v. Calcutta Stock Exchange Association (1963) 33 Com Cases 862: AIR 1964 SC 250*].**

Space to write important points for revision

2014 - June [6] (d) X Ltd. received valid share transfer deed together with the requisite documents for transferring 1,000 equity shares of the company from Ram to Shyam. Advise the company in the following cases:

(i) Ram dies before the transfer is effected by the company.

(ii) Shyam dies before the transfer is effected by the company.

Assume that the company has no information about the death in both the cases. **(4 marks)** ***[CSPP P-1]***

Answer:

If transferor sold his shares by executing a transfer deed in favour of transferee and such documents were lodged for transfer but the transferor dies before such transfer is registered by the Company, the company would register the transfer, irrespective of whether the death of transferor is intimated to company before registration of transfer or whether death is intimated after registration of transfer.

If transferee dies before registration and company has notice of his death, transfer of shares cannot be registered in the name of the transferee who has already deceased. With the consent of the transferor and the legal representatives of the transferee, the transfer may be registered in the name of the legal heirs of the transferee (who has already died) or his nominee, if

any. But if there is a dispute, an order of the NCLT will be insisted by the company before effecting the transfer. In case, the death of transferee is not notified to the company, the company can register the transfer in the name of the deceased transferee, in as much as the company is not aware of the death of the transferee and the transfer is done bonafide by the company, as per the information available with it. So, considering this:

(i) Ram's (Transferor) death would not affect the transfer process.

(ii) If the company has the notice of Shyam's (Transferee) death, the company has to follow the procedure mentioned above otherwise the company can register the transfer in the name of the Shyam.

Space to write important points for revision

2014 - Dec [3] (c) A listed company has taken a term loan from a financial institution and is regularly paying the interest and loan installments. The institution proposes to convert 20% of the loan into equity shares of the company as per the terms of the loan agreement. Advise the company, whether the financial institution can enforce the convertibility clause.

(4 marks) ***[CSPP P-1]***

Answer:

Section 62 (3) of the Companies Act, 2013 states that the provisions of **Section 62** shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the companies to convert such debentures/loan into shares in the company. Further, the terms of issue of such debentures or loan containing such an option should have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in General Meeting.

Thus in the given case, if the raising of loan is already approved by the shareholders by special resolution, then the financial institution can enforce the convertibility.

Space to write important points for revision

2014 - Dec [3] (c) The board meeting of MANO LTD. was held on 10th June, 2014 at Lucknow at 10.30 a.m. At the time of starting the board meeting, the number of directors present were 8. The total number of directors in the company were 10. The board transacted eight items in the board meeting on that day. At 12 noon after the completion of four items in the agenda, 5 directors left the meeting.

Examine the validity of all these transactions explaining the relevant provisions of the Companies Act, 2013. **(4 marks)** ***[CMA PAPER - 13]***

Answer:

- Section 174 of the Companies Act, 2013, provides for the quorum for meeting.
- The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher.
- Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time.
- In this case, the quorum is 4 (i.e. 1/3rd of 10 = 3 1/3 rounded off as 4).
- Hence, the quorum was present at the time of commencement of meeting. As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business.
- It is not enough that a quorum was present at the commencement of the business.
- The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. *(Balakrishna V. Balu Subudhi AIR 1949 Pat 184).*

In the given situation four items were transacted with the quorum and thus they are valid. Other four items were transacted after 5 directors left the meeting resulting in the reduction of quorum as only 3 directors were present as against the required quorum of 4 directors. Hence, such four transactions are void.

Space to write important points for revision

2014 - Dec [5] (a) You are the Company Secretary of a public limited company having paid-up share capital of ₹ 5 crore. On receipt of notice and agenda for the next Board meeting, one of the directors of the company has submitted necessary form making disclosure to the company that he is interested in the contract which the Board of directors proposes to enter into with a private company in which he is a director. Advise the Board of directors, the procedure the company has to undertake regarding the contract. **(8 marks)** ***[CSPP P-1]***

Answer:

Under **Section 184 (2)** of the **Companies Act, 2013** every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into–

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

- It may be noted that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.
- A contract or arrangement entered into by the company without disclosure under **Section 184 (2)** or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

Note: *In the given case also the interested director cannot participate in the item concerning the contract in which he is interested. The particulars of the contract have to be entered in the Register of contracts and placed at the next board meeting and signed by all the directors present at the meeting. The Register should also be produced and remain open and accessible at the commencement of every annual general meeting.*

Space to write important points for revision

2015 - June [2] (d) (i) Telco Ltd. had the following items under the head 'Reserves and Surplus' in the Balance Sheet as on 31st March, 2015.

	Amount ₹ in Lakhs
Capital Reserve	70
Security Premium Reserve	80
General Reserve	70

The company had an accumulated loss of ₹ 240 Lakhs on the same date, which it has disclosed under the head 'Statement of Profit and Loss' as an asset in its Balance Sheet. Comment on accuracy of this treatment in line with schedule III to the Companies Act, 2013.

(4 marks) ***[CMA PAPER - 13]***

Answer:

Debit balance of statement of profit & loss (after all allocations and appropriations) shall be shown as a negative figure under the head 'surplus'. Similarly, the balance of 'reserve & surplus', after adjusting balance of surplus, shall be shown under the head 'Reserve & Surplus' even if the resulting figure is in negative. [As per Note 6(B) part 1 of Schedule III of the Companies Act, 2013.]

In this case, the debit balance of profit & loss i.e ₹ 240 lakhs exceeds the total of all reserve i.e ₹ 220 lakhs.

Therefore, balance of 'Reserve & Surplus' after adjusting debit balance of profit & loss is negative by ₹ 20 lakhs, which should be disclosed on the face of the Balance Sheet as the sub heading 'Reserve & Surplus' under the heading 'Shareholders fund'.

Thus, treatment done by the company is incorrect.

Space to write important points for revision

2015 - June [2A] (Or) (iv) ABC Ltd. appointed Anil as director on 1st November, 2014. Subsequently, Anil obtained his DIN on 10th November, 2014. ABC Ltd. filed DIR-12 on 15th November, 2014. Examine the legal validity of the appointment of Anil. **(4 marks)** ***[CSPP P-1]***

Section 152(3) of the **Companies Act, 2013,** prescribes that no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under **Section 154.**

- Further **Sub-Section (4)** prescribes that every person proposed to be appointed as a director by the company in general meeting shall furnish his DIN.
- In addition, **Rule 9** of the **Companies (Appointment and Qualification of Directors) Rules, 2014** prescribes that every individual, who is to be appointed as director of a company shall make an application electronically in Form **DIR-3** to the Central Govt. for the allotment of a DIN.
- Based upon the legal provisions of the Act and rules made thereunder, the appointment of Anil as director by ABD Ltd. is not valid.

Space to write important points for revision

2015 - June [4] Explain the following quoting relevant case law, if any :

(a) Red Cap Ltd. wants to reduce its equity share capital to extinguish the holding of only non-promoter shareholders on payment of the value of their shares. Reduction was approved by the requisite majority of equity shareholders including non-promoter shareholders. Will such selective reduction be sanctioned? **(6 marks)** ***[CSPP-1]***

Answer:

Such reduction in equity capital to extinguish the holding of only non-promoters will be sanctioned. In the matter of ***Sandvik Asia Ltd. v. Bharat Kumar Padamsi (2009) 151 Com Cases 251 (2010) 2 Com LJ 255 (Bom)***, where the object of reduction was to extinguish the holding of non-promoter shareholders on payment of fair value for their shares and reduction was approved by a majority of equity shareholders including majority of non-promoter shareholders, the reduction was sanctioned.

Space to write important points for revision

2015 - June [4] Explain the following quoting relevant case law, if any :

(b) Smart Ltd. wants to include a provision in the articles of association by altering it to limit the company's share capital to a fixed amount. Can it do so ? Will your answer be different if 100% shareholders agree for such alteration? **(5 marks)** ***[CSPP P-1]***

Answer:

A provision of the Articles which has the effect of limiting the company's share capital to a fixed amount would have no effect being contrary to the Act. **[*Miheer Hemant Mafatlal v. Mafatlal Industries Ltd., (1987) 89 Bom LR 86 (Bom*)**.

The legal position shall not change even if 100% shareholders agree for such alteration as all members become bound by a valid alteration whether they voted for or against the resolution.

The Smart Ltd. cannot include a provision in the articles of association by altering it to limit the company's share capital to a fixed amount.

Space to write important points for revision

2015 - June [5] (b) Manohar Motors Ltd. has a paid-up share capital of ₹10 crore and free reserves of ₹ 5 crore. The Board of directors want to borrow a sum of ₹ 20 crore for its long-term capital requirements from the market. Discuss whether they can do so and if yes, what are the requirements under the Companies Act, 2013 which they have to comply with.

(4 marks) ***[CSPP P-1]***

Answer:

In terms of **Section 180(1)(c)** of the **Companies Act, 2013,** a company can borrow money, where the money to be borrowed, together with the money already borrowed by the company exceeds aggregate of its paid up share capital and free reserves, only with the consent of company by special resolution.

Temporary loans obtained from the Bankers are not to be considered while calculating the limits. [Proviso the **Section 180(1) (c)**]

In this case under consideration, we should see if the Articles of Association of Manohar Motors Ltd. allow such borrowings. If not, company should alter its articles to provide for the same. The company should hold a general meeting in which a special resolution be passed authorising the Board of Directors to borrow money up to ₹ **20** crores. As this limit exceeds the paid-up capital of ₹ **10** crores and free reserves of ₹ **5** crores.

The other requirements to be complied with *inter alia* include provisions in the Articles of Association, holding BOD meeting to decide special resolution to be passed, approving notice of General Meeting, draft of special resolution and also Explanatory statement thereto, holding General Meeting by giving **21** days clear notice, getting the special resolution passed and filing the same with the ROC within **30** days, after this the BOD can go ahead to borrow up to ₹ **20** crores.

The resolution of the Board of Directors should be passed at a meeting, **Section 179(3)(d).**

Space to write important points for revision

2015 - Dec [1] (a) Your client Vivek wants to form a private company with a share capital of ₹ 50,000. Examining the relevant provisions of the Companies Act, 2013, advise Vivek on the following issues with proper justification:

(i) Whether Vivek will be successful in the formation of the proposed company?

(ii) Whether public can be invited for subscribing to the share capital of the proposed company?

(iii) Whether registration of articles of association of the proposed company is mandatory?

(iv) Whether Vivek will be able to convert the proposed private company into 'one person company' at a later date, if need be?

(v) As regards to stamp duty state whether it will make any difference if the proposed company is incorporated in the State of Haryana or in the State of Kerala. **(5 marks)** ***[CSPP P-1]***

Answer:

(i) **Section 2(68) of the Companies Act, 2013** defines the term 'private company' to mean a company having a minimum paid-up share capital as may be prescribed, and which by its Articles:

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred and

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

Accordingly, since there is no requirement of minimum share capital, Vivek will be successful in the formation of the proposed company on complying with other provisions of the **Companies Act, 2013.**

(ii) In view of **Section 2(68)** defining the term 'private company' which prohibits any invitation to the public to subscribe for any securities of the company, the proposed company cannot invite for subscribing share capital.

(iii) Yes, registration of Articles of Association of the proposed company is mandatory. **Section 7 of the Companies Act, 2013** deals with incorporation of company. **Section 7(1)** requires *inter-alia* to file Memorandum and Articles of the company duly signed by all the subscribers to the memorandum. **Section 7(2)** provides that the Registrar on the basis of documents and information filed shall register all the documents and issue a certificate of incorporation to the effect that the proposed company is incorporated under this Act.

(iv) Yes, **Section 18** read with **Rule 7** of the **Companies (Incorporation) Rules, 2014** provides that a private company other than a company registered under **Section 8** of the Act having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less may convert itself into One

Person Company by passing a special resolution in the general meeting. Before passing such resolution, the company shall obtain no objection in writing from members and creditors.

(v) Yes, Stamp duty on Incorporation documents (**Form 1**, MoA, AoA) is state subject under Constitution. Accordingly, each state has provided different rate of stamp duty for incorporation documents in the relevant Stamp Act/Rules of the concerned State/Union Territory Government.

Space to write important points for revision

2015 - Dec [1] (c) William & Company, a company incorporated in U.K., decides to set-up its corporate office in Mumbai. Accordingly, the Board of Directors of the company passes a resolution.

The Board seeks your advice on the procedure to be adopted to carry out the proposal of the company. Advise the Board about the procedure to be followed and forms and documents the company is required to file with the Registrar of Companies. **(5 marks)** ***[CSPP P - 1]***

Answer:

As per **Section 2(42) of the Companies Act, 2013** "Foreign Company" means any company or body corporate incorporated outside India which:

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Accordingly, William & Company, a company incorporated in U.K. in case, it sets up its corporate office in Mumbai would be termed as a 'Foreign Company' under the **Companies Act, 2013**. Accordingly, the following procedure would be required to comply with.

Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration **[Section 380(1)] :**

(a) a certified copy of the charter, statute or Memorandum and Articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company with particulars;
(d) the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(f) particulars of opening and closing of a place of business in India on earlier occasions;
(g) declaration that none of the directors of the company or authorised representatives in India has ever been convicted or debarred from formation of companies and management in India or Abroad; or
(h) other prescribed particulars.

In addition to above, a list of Directors and Secretary of Company, needs to be delivered to the Registrar **(Rule 3)** of **Companies (Registration of Foreign Companies) Rules, 2014**.

The Foreign Company shall, within a period of thirty days of establishment of its place of business in India, file **Form FC-1** of the **Companies (Registration of Foreign Companies) Rules, 2014** and the application shall also be supported with an attested copy of approval from Reserve Bank of India under Foreign Exchange Management Act or Regulations and also from other Regulators, if any.

2015 - Dec [1] (d) The Board of Directors of Wise Ltd., a company incorporated under the Companies Act, 2013 and listed at Bombay Stock Exchange, at its meeting resolves to issue certain number of shares with differential dividend and voting rights. The Board of Directors presents the following information:

(i) The Board has decided to keep the shares with differential dividend and voting rights at 51% of the paid-up share capital.
(ii) As per the track record, the company has a record of distributable profits for the last two years only; before that the company had suffered heavy losses.

Examining the provisions of the Companies Act, 2013 and the rules framed thereunder, stating the conditions, if any, decide whether the company can

proceed with the execution of Board's resolution for issue of shares with differential rights in respect of dividend and voting. **(5 marks)** ***[CSPP P-1]***

Answer:

Section 43 of the Companies Act, 2013 empowers the company to have equity share capital of a company with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

Rule 4 of the **Companies (Share Capital and Debentures) Rules, 2014** deals with procedure for issuing equity shares with differential rights. It provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:

(a) the Articles of Association of the company authorizes the issue of shares with differential rights;

(b) the issue of shares is authorised by an ordinary resolution passed at a general meeting of the shareholders. Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(c) the shares with differential rights shall not exceed twenty six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the company having consistent track record of distributable profits for the last three years;

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

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

(g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become

repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government.

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

Since, these rules require that the shares with differential rights shall not exceed **26** percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time and the company having consistent track record of distributable profits for the last three years, the company cannot proceed with issuing shares with differential voting right with the given conditions:

- To keep shares with differential dividend and voting rights at **51%** of paid up share capital.
- Record of distributable profits for last two years only.

Space to write important points for revision

2015 - Dec [1] (A) An association of 120 persons has been formed with the object of acquisition of gain. Now, due to an internal mismanagement, the said association has applied for being wound up under the provisions of the Companies Act, 2013. Advise. **(3 marks)** ***[CMA PAPER - 13]***

Answer:

- According to Section 464 of the Companies Act, 2013, no association or partnership consisting of more than prescribed number of persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the

individual members thereof, unless it is registered as a company under the Companies Act, or is formed under any other law for the time being in force. Further, the prescribed number of persons shall not exceed 100.

- The association as mentioned in the question exceed the prescribed number of members i.e., it consists of 120 members and it is not registered as a company under the Companies Act, 2013.
- Where an association is formed, which has membership in excess of the number aforementioned, will be an illegal association except it is registered as company under Companies Act, 2013.
- Such a body will have no legal existence and it cannot be wound up under the Companies Act, 2013, or even as an unregistered company. Neither any member of it would be able to sue it nor would it be able to sue the member.
- Further, every member of an association or partnership carrying on business in contravention of above law, shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

Space to write important points for revision

2015 - Dec [1] (B) PWL Limited is facing loss in business during the current Financial Year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so? **(3 marks)** ***[CMA PAPER - 13]***

Answer:

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

However, in case the company has incurred loss during the current financial year up to the end of 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.

In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, 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 year [i.e. 8 + 10 + 12 = 30/3 =10%].

Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

Space to write important points for revision

2015 - Dec [2] (a) Rohan, a person resident in India, has been running a hotel as a sole proprietor. He now wants to convert his business into a 'one person company' (OPC) as permissible under the provisions of the Companies Act, 2013 and seeks your advice in this regard. Advise him on the procedure to be followed for conversion of his business into an OPC.

What shall be your advice if Rohan is a non-resident Indian? Whether a partnership firm can form an OPC? **(4 marks)** ***[CSPP P - 1]***

Answer:

One Person Company:

Section 2(62) of the Companies Act, 2013 define "one person company" as a company which has only one person as member. OPC is a sub-domain of Private Company as per **Section 2(68).**

Rule 3 of the **Companies (Incorporation) Rules, 2014** say, only a natural person who is an Indian citizen and resident in India:

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

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

A person can incorporate only one "One Person Company".

The subscriber to the Memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company. The name of the person nominated shall be mentioned in the Memorandum of One Person Company and such nomination in **Form INC – 2** along with consent of such nominee obtained in **Form INC – 3** and fee as provided in the **Companies (Registration Offices and Fees) Rules, 2014** shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Form SPICE-32 is form for incorporation of one person company. The form is similar to **Form INC – 7** except this form contain Nomination details and particulars of nominee.

Attachments:

i. Memorandum of Association
ii. Articles of Association
iii. Proof of identity of the member and the nominee
iv. Residential proof of the member and the nominee
v. Copy of PAN Card of member and nominee
vi. Consent of Nominee in **Form INC – 3**
vii. Declaration from the subscriber and first Director to the memorandum in **Form INC – 9**
viii. List of all the companies (specifying their CIN) having the same registered office address, if any;
ix. Specimen Signature in **Form INC – 10**
x. Entrenched Articles of Association
xi. Proof of Registered Office address (Conveyance/Lease deed/Rent Agreement etc. along with rent receipts)
xii. Copies of the utility bills (not older than two months)
xiii. Proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/Person (not taken on lease by company)

xiv. Consent from Director
xv. Optional Attachments.

Note: *In the given case, only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a one person company. In the given case Rohan is a non-resident than it can not be form OPC and a partnership firm cannot form OPC.*

Space to write important points for revision

2015 - Dec [2A] (Or) (i) Corporate Social Responsibility (CSR) provisions are applicable to Microskill Ltd. The company finalised the project under its CSR initiatives which require funds beyond the mandated 2% of average net profit of the company for last three financial years. Will such excess expense, when incurred, be counted in subsequent financial years as a part of CSR expenditure? Advise. **(4 marks)*[CSPP P-1]***

Answer:

In terms of **Section 135(5)** of the **Companies Act, 2013,** the Board of every company to which **Section 135** is applicable shall ensure that the company spends in every financial year, at least **2%** of the average net profits of the company made during the three preceding year.

"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed."

Space to write important points for revision

2015 - Dec [2A] (Or) (ii) A real estate company took advance money from its customers in the course of business on which no interest is supposed to be paid to the customers. At the end of financial year, company is in dilemma whether to treat this advance as 'advance' or 'deposit'. Advise the company on how to treat this amount without interest. **(4 marks)** ***[CSPP P-1]***

Answer:

As per the **Rule 2(xii)** of the **Companies (Acceptance of Deposits) Rules, 2014**, deposit does not include any amount received in the course of, or for the purposes of the business of the company as an advance for supply of goods or provision of services/received in connection with consideration for an immovable property/as security deposit for performance of contract for supply of goods or services/as advance received under long term projects for supply of capital goods.

- But if the amount received becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission to deal in the goods or properties or services for that money is refundable in 15 days otherwise deemed as deposit.
- Further, whether interest is charged or not is immaterial. Thus, advance taken from customers by Real Estate Company shall not be considered as deposits. But if it is not adjusted against the property in accordance with the terms of agreement or arrangement, then it will be treated as deposit.

Space to write important points for revision

2015 - Dec [2A] (Or) (iii) Mirage Ltd. is an unlisted company having 15 directors on its Board. The company has paid-up share capital of ₹ 200 crore and has achieved in the previous financial year a turnover of ₹ 400 crore.
The provisions of the Companies Act, 2013 require the companies to have the following categories of directors on their Board:
(a) Women director
(b) Resident director
(c) Independent director
Examining the provisions of the Companies Act, 2013, decide whether the company must appoint directors under all the above categories.

(4 marks) ***[CSPP P-1]***

Answer:

(a) Woman Director: Proviso to **Section 149(1)** read with **Rule 3** of the **Companies (Appointment and Qualification of Directors) Rules, 2014** provides that the following class of companies shall appoint at least one woman director. These companies under the provisions are:

1. Every listed company and

2. Every other public company having (a) paid-up share capital of ₹ **100** crore or more; or (b) a turnover of ₹ **300** crore or more.

Accordingly, since Mirage Limited is a public company and the paid up capital of company is ₹ **200** crores, the company shall appoint at least one woman director.

(b) Resident Director: Section 149(3) requires every company to have at least one director who has stayed in India for a total period of not less than **182** days in the previous calendar year. This section is applicable to every kind of company whether listed or unlisted, private or public. Accordingly, the company is required to have one Resident Director.

(c) Independent Director: As per **Section 149(4),** every listed company shall have at least 1/3rd of the total numbers as independent directors. The Central Government, may however, prescribe the minimum number of Independent Directors in case of any class or classes of public companies. According to **Rule 4** of the **Companies (Appointment and Qualification of Directors) Rules, 2014** provides that the following companies are required to have at least **2** directors as independent directors:

(i) The public companies have paid up share capital of ₹ **10** crore or more; or

(ii) Public companies having turnover of ₹ **100** crore or more; or

(iii) Public companies which have in aggregate, outstanding loans, debentures, and deposits exceeding ₹ **50** crore.

In the given case, since the company fulfils the conditions as required in respect of paid-up capital and turnover, the company must appoint atleast **2** independent directors.

Space to write important points for revision

2015 - Dec [2] (d) Board of Directors of Clever Ltd., listed at Madras Stock Exchange, decides to issue equity shares to persons who are neither the existing shareholders nor the employees of the company. The articles of association of the company are silent on this issue. You being the corporate practitioner are approached by the Board to examine whether the Board's

decision is valid. What shall be your advice in respect of pricing of the issue- (i) if the issue is for consideration of cash; and (ii) if the issue is for consideration other than cash? **(4 marks)** ***[CSPP P-1]***

Answer:

- **Section 62(1)(c)** read with **Rule 13** of **Companies (Share Capital and Debentures) Rules, 2014** deals with the issue of shares on preferential basis and provides that where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to any persons, if it is authorised by a special resolution, whether or not those persons include the persons who are existing shareholders or employees, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
- **Rule 13(2)** provides that the issue should be authorized by Articles of Association. In the given case since the Articles are silent on the issue, first, the Article will have to be amended to confer upon the company power to carry out the Board's decision. Accordingly, the company has to pass a special resolution at a general meeting and file **Form MGT-14** with the Registrar of Companies within **30** days of passing the Resolution.
- The issue on preferential basis should also comply with conditions laid down in **Section 42** of the Act.
- Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation.
- As per **Rule 13(2)**, where the preferential offer of shares is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the requirements therein.

Space to write important points for revision

2015 - Dec [2] (E) (i) A scheme of amalgamation of Anu Co. Ltd. with Priya Co. Ltd. was presented to the Tribunal for sanction after the scheme was approved by an overwhelming majority of shareholders, secured and unsecured creditors of both companies at meeting held under Section 231 of the Companies Act, 2013. While the scheme was pending in the High Court, some of the members requisitioned EGM for the purpose of requesting company 'Anu Limited' to negotiate with company 'Priya Ltd.' as according to the requisitionists the exchange ratio was not fair and reasonable. Can the directors refuse to call EGM? Comment.

(3 marks) ***[CMA PAPER - 13]***

Answer:

In such a case, the tribunal cannot prevent a company from holding a requisitioned meeting for considering a proposed modification of a scheme which is already pending before the tribunal for its sanction.

The Tribunal has wide powers u/s 231 to give directions or make such modification in the compromise or arrangement as it may consider necessary for proper working of the compromise or arrangement arrived at.

Any modification in the scheme could be considered by the Tribunal at the instance of a shareholder.

Further, a mere discussion by the shareholders at a properly requisitioned meeting about the proposal modification to the scheme pending before the Tribunal for sanction would not by itself affect either the Scheme or the Tribunal power to consider the modification and sanction of scheme with or without modification.

Hence, directors can't refuse to call an EGM requisitioned by the member.

Space to write important points for revision

2015 - Dec [3] (a) Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointments on the Board made by Star Ltd., incorporated on 3rd January 2015:

(i) Dilip, an Indian national normally stays in U.S. During the calendar year 2014, he stayed in India for 120 days, appointed as a resident director.

(ii) Star Ltd. being an unlisted company having a turnover of ₹ 100 crore, appoints Ms. Tanya as the director on 1st February, 2015. Ms. Tanya already holds directorship in ten public companies. She is a whole-time Company Secretary in practice.

(iii) Supatra, a Practicing Company Secretary holds directorship in eight public companies and six private companies. In addition, he also holds alternate directorship in three companies and directorship in three subsidiary companies of Star Ltd. **(4 marks)** ***[CSPP P-1]***

(b) Mohan, a director in Agile Ltd. holding director's identification number (DIN) allotted by the Central Government has now accepted directorship in two other public companies and three private companies. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Whether he is required to obtain DIN for each of the companies in which he has been appointed as director?

(ii) After obtaining DIN, there are some changes in the particulars of Mohan. What procedure would you follow to get the changes incorporated in the DIN already allotted to Mohan?

(4 marks) ***[CSPP P-1]***

Answer:

(a) (i) Since **Section 149(3)** requires the person who has stayed in India for a total period of not less than **182** days during the financial year can be a Resident Director. Accordingly, Dilip who has stayed for **120** days in India during calendar year **2014** cannot be appointed as Resident Director.

Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty- two days during the financial year.

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

(ii) **Section 165** of the **Companies Act, 2013** regulates the appointment of directors in a company and the number of directorships an individual can hold. Accordingly, a maximum limit on total number of directorships has been fixed at **20** companies

including a sub-limit of **10** for public companies, i.e. an individual cannot be a director of more than **10** public companies.

Accordingly, Ms. Tanya may not be appointed as director as this would be her **11th** public unlisted company.

(iii) While counting the number of directorships in public company, directorship in private companies that are either holding or subsidiary company of a public company shall be included. Alternate directorship shall also be included in the above number.

Supatra's directorship is as follows:

- In **8** public companies;
- In **6** private companies;
- Alternate directorships in **3** companies;
- **3** subsidiary public companies (subsidiary of Star Limited)

Accordingly, Since Supatra already holds **10** directorships in public companies, he cannot be so appointed in the **11th** public company. If he is appointed, he will have to vacate the directorship in one of the companies of his choice.

(b) (i) **Section 155** of the **Companies Act, 2013** provides for prohibition to obtain more than one Director Identification Number. An individual needs to have only one DIN. Accordingly, he is not required to obtain a separate DIN for each company. Only one DIN is sufficient. **Rule 12** of **Companies (Appointment & Qualification of Directors) Rules, 2014** deals with the procedure for intimating changes in particulars of DIN as follows:

(ii) Every individual who has been allotted a DIN shall in the event of any change in his particulars as stated in **Form DIR-3**, intimate such change(s) to the Central Government within a period of **30** days of such change(s) in **Form DIR-6** in the following manner, namely:

(a) The applicant shall download **Form DIR-6** from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the **Form DIR-7** all of which shall be scanned and submitted electronically.

(b) The form shall be digitally signed by a Chartered Accountant in Practice or a Company Secretary in Practice, or a Cost Accountant in Practice.

(c) The applicant shall submit the **Form DIR-6**.
The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in electronic data base maintained by the Ministry.
The concerned individual shall also intimate the changes to the concerned company in which he is a director within **15** days of such change.
Accordingly, Mr. Mohan should follow the above procedure for getting the changes incorporated in the original DIN already allotted to him.

Space to write important points for revision

2015 - Dec [4] (a) The net profits of ABC Ltd. as disclosed in the company's balance sheet for three preceding financial years are as under:

Financial year ended	Net Profit (₹)
31st March, 2013	50 crore
31st March, 2014	70 crore
31st March, 2015	90 crore

Board of Directors of the company decides to contribute to a political party fund during the financial year 2015-16. The Board wants to contribute 20% of the average profits of the above three years' profits. Comment, explaining the provisions of the Companies Act, 2013 in this regard.

(4 marks) ***[CSPP P-1]***

Answer:

Prohibitions and Restrictions Regarding Political Contributions:

According to **Section 182(1)** of the **Companies Act, 2013,** Government Companies and Companies which have been in existence for less than **3** financial years are not allowed to make political contributions. Political contribution may be made by any other company subject to the following conditions:

- The aggregate amounts contributed and proposed to be contributed by a company in any financial year shall not exceed **7.5%** of its average net profits of preceding last **3** financial years.
- Board resolution should be passed.

It further requires that no such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors.

The Board's decision to contribute to political party **20%** of its average profits for last **3** years is in excess of the permissible limit of **7-1/2%** of the average profits of preceding **3** financial year. Therefore, the decision of the Board is not valid.

Note:

Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.

Space to write important points for revision

2015 - Dec [4] (c) You are the Company Secretary of a public limited company having paid-up capital ₹ 100 crore. On 25th May, 2015, CFO of the company informed the Board of Directors that statutory audit for financial year 2014-15 is successfully over and Board may accordingly plan to have its annual general meeting. Board of Directors of the company is not very clear on the contents of Board's Report as per the requirements of Companies Act, 2013.

Advise your management on the contents of Board's Report to comply with the requirements of the Companies Act, 2013. **(8 marks)** ***[CSPP P-1]***

Answer:

Directors' Report: Section 134(3) of the **Companies Act, 2013** provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include:

(a) the extract of the annual return as provided under **Sub-Section (3)** of **Section 92;**

Amendment made by Companies (Amendment) Act, 2017:
Revised Section 134(3)(a)-

"(a) the web address, if any, where annual return referred to in sub-Section (3) of Section 92 has been placed;"
(b) number of meetings of the Board;
(c) Directors' Responsibility Statement;
(d) a statement on declaration given by independent directors under **Sub-Section (6)** of **Section 149;**
(e) in case of a company covered under **Sub-Section (1)** of **Section 178,** company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under **Sub-Section (3)** of **Section 178;**
(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made:
  (i) by the auditor in his report; and
  (ii) by the company secretary in practice in his secretarial audit report;
(g) particulars of loans, guarantees or investments under **Section 186;**
(h) particulars of contracts or arrangements with related parties referred to in **Sub-Section (1)** of **Section 188** in the prescribed form;
(i) the state of the company's affairs;
(j) the amounts, if any, which it proposes to carry to any reserves;
(k) the amount, if any, which it recommends should be paid by way of dividend;

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

Amendment made by Companies (Amendment) Act, 2017:

Revised Section 134(3)(p)-

"(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made."

Proviso to Revised Section 134(3)-

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web- address is indicated therein at which the complete policy is available."

Section 134(3A) -

"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."

Space to write important points for revision

2015 - Dec [6] (a) Arc Ltd. has two managing directors, three whole-time directors, and two part-time directors. Referring to the provisions of the Companies Act, 2013, state the extent to which the managing directors, whole-time directors and part-time directors can be paid remuneration, when the company has sufficient profits.

Further, what advice would you render when company's profits are inadequate? Can the company continue to make payment of remuneration?

(b) Prince was appointed as additional director by the Board of Directors of John Ltd. on 1st March, 2015. He was simultaneously appointed as the company's managing director by majority voting at the same Board Meeting. Referring to the provisions of the Companies Act, 2013, examine the validity of the appointment of Prince as additional director and as the managing director at the same time. What shall be your answer in case Prince failed to get appointed at the company's annual general meeting? **(4 marks each)** ***[CSPP P-1]***

Answer:

(a) Payment of managerial remuneration to Managing Directors, Whole-time directors and Part-time Directors is regulated by the provisions of **Companies Act, 2013** as contained under **Section 197(1).**

- Accordingly, the total managerial remuneration payable by a public company to its directors (including managing director and whole-time directors) and manager in a financial year shall not exceed **11%** of the net profits of the company.

Net profits are to be calculated as provided in **Section 198.**

- Any remuneration exceeding **11%** of net profits limit may be payable subject to compliance of conditions given in **Schedule V**. In case these requirements are not fulfilled, such remuneration will be subject to the approval of Central Government [First Proviso to **Sec. 197 (1)]**.

- The remuneration of any one Managing Director or Whole time Director or Manager shall not exceed **5%** of the net profits. Where, there are more than one Managing Director or Whole time Director, the overall limit is **10%** of the net profits.
- The remuneration may exceed this limit only after approval of company in general meeting and after satisfying the conditions given in this Section and **Schedule V.**

Remuneration in case of inadequacy of profits or no profits:

(Section II Part II Schedule V): In case of inadequate profits or no profits, a company may pay to a managerial person without Central Government approval remuneration not exceeding the higher of the limits specified in **(Section II Part II** of **Schedule V)** with ordinary/special resolution as the case may be.

Remuneration to part-time directors:

Section 197(1) regulates the remuneration payable to directors who are neither managing director nor whole time director and shall not exceed:

1. **1%** of the net profits of the company, if there a managing or whole time director or manager.
2. **3%** of the net profits in any other case.

Besides, these percentage/s directors shall also be entitled to get sitting fee for Board Meeting and also for attending the committee meetings in which director's member. The maximum fee is ₹ **1** lakh per meeting.

(b) Articles of a company may confer upon its Board power to appointment Additional Director, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier **[Sec. 161(1)]**.

If a director, during his tenure as additional director of the company had been appointed as managing director of the company, his appointment as managing director also ceases simultaneously with the termination of his directorship at the commencement of the AGM.

However, if such a person was elected as a regularized director at the AGM, he will continue to be a director of the company and also as its managing director for the period for which his appointment as managing director had been made under **Section 196** of the **Companies Act, 2013.**

Since, Prince was appointed first as additional director and then a managing director may be in the same director the appointment as MD is valid, but if he fails to get his appointment as additional director regularized in the AGM he will automatically cease to be Managing Director of the company.

☞ **Amendment made by Companies (Amendment) Act, 2017:**

Revised First Proviso to Section 197(1) -

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:"

Revised Second Proviso to Section 197(1) -

"Provided further that, except with the approval of the company in general meeting by a special resolution,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one percent of the net profits of the company, if there is a managing or whole- time director or manager;

(B) three percent of the net profits in any other case.

Third Proviso to Section 197(1)-

"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or

public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

Space to write important points for revision

2015 - Dec [6] (c) Jewel Ltd. called its annual general meeting on 25th September, 2015. At the meeting, the required quorum was present. The meeting started transacting the business slated on the agenda. After completion of few agenda items, the Chairman of the company adjourned the meeting on his own without seeking the consensus of the members of the company present at the meeting. The Chairman further stated that the adjourned meeting shall be scheduled at a later date to be decided by the Board of Directors.

You being a corporate professional, examine the validity of the Chairman's decision to adjourn the meeting. Also explain the powers of the Chairman in this regard. **(4 marks)** ***[CSPP P-1]***

(d) Decent Ltd. was incorporated under the Companies Act, 2013 on 1st January, 2014. The first financial year of the company was closed on 31st March, 2014. Explaining the provisions of the Companies Act, 2013 —

(i) State as to when should have the company held its first annual general meeting (AGM) and the subsequent AGM.

(ii) The meeting as per schedule was conducted but could not complete the business as slated on the agenda. As a result, the meeting was adjourned to a later date to transact the unfinished business. Certain shareholders give a notice to the company where they wanted certain new business to be transacted at the adjourned AGM. State whether the new business can be transacted at this adjourned meeting. **(4 marks)** ***[CSPP P-1]***

Answer:

(c) Adjournment of a meeting means the deferring or suspending the meeting to a future time, either at an appointed date or indefinitely or as decided by the members present at the scheduled meeting. For a valid

adjournment of a General Meeting, the holding of the Meeting at its scheduled time is necessary.

It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned meeting.

Once a meeting is called, the Chairman cannot adjourn it arbitrarily. Its continuance or adjournment rests entirely on the will of the members. If a Chairman vacates the Chair or adjourns the meeting regardless of the views of the majority, those remaining, even if a minority, can appoint a Chairman and conduct the business left unfinished by the former Chairman ***(Catesby Vs. Burnett, (1916) 2 Ch. 325 (Ch.D)***

Where a meeting is unlawfully adjourned by the Chairman thinking that he is not likely to succeed in his object, the remaining members possess the right to continue the meeting and conduct the business left un-transacted by the Chairman ***(Seth Sobhag Mai Lodha Vs. Edward Mills Co. Ltd. (1972) 42 Com Cases 1 at 18 (Raj)*.**

Further in case of ***United Bank of India Ltd. Vs. United India Credit*** and Development Corporation Ltd. (1977) 47 Com Cases 689, it was held that every Chairman has the right to make a *bona fide* adjournment whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe or seriously difficult for the members to tender their votes.

Therefore, though the Chairman has power to adjourn the meeting on its own but only in exceptional cases where it becomes extremely difficult to continue because of violent interruption and continuing the meeting will be unsafe.

(d) In accordance with the provisions of the **Companies Act, 2013** as contained under **Section 96(1),** the first AGM of the company shall be held within a period of **9** months from the date of closing of the first financial year of the company. If a company holds its first AGM as aforesaid, it shall not be necessary to hold such a meeting in the year of its incorporation.

In case of subsequent meetings, AGM shall be held within a period of **6** months, from the date of closing of the financial year. Not more than **15** months shall elapse between the date of one AGM and that of the next. The Registrar may, for any special reason extend the time within which any AGM shall be held by a period not exceeding three months. Registrar however, can not extend the time for the first AGM.

Further, if the AGM is called and held on the scheduled date but could not complete the agenda and the meeting, can be adjourned at a later date (but not later than **30** days) to complete the unfinished agenda, such an adjourned meeting is the continuation of the meeting and only the unfinished agenda for proper notice was already given, shall be transacted. No new business can be transacted at this meeting.

Thus, applying the above provisions in the given case answers to sub-question are:

(i) The first AGM of the company should be held within a period of 9 months from the closer of the first financial year of the company. The company should hold the AGM by 31st December, 2014. Any subsequent AGM must be held within a period of **6** months from the close of the financial year i.e. by 30th September, 2015.

(ii) The adjourned meeting as per the provisions as stated above is the meeting in continuation, only unfinished business can be transacted. Since, no new business can be transacted at this adjourned meeting, shareholders contention in the given case shall not be tenable.

Space to write important points for revision

2016 - June [1] {C} Answer the following :

(a) Mr. Kachi was appointed as an additional Director of ROYAL Ltd. w.e.f. 1st October 2015, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2016, but the same was not held due to delay in the finalization of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr.

Kachi and his continuation as additional Director beyond 31st March, 2016. Advise the company on the complaint made by the shareholders.

(5 marks) ***[CMA PAPER - 13]***

Answer:

Under Section 161(1) of the Companies Act, 2013 the article of a company may confer on its Board of Directors the power to appoint, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Further, Section 161(4) states that, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

In the given case, Mr. Kachi has been appointed as an additional director in order to fill in a casual vacancy. A casual vacancy on the Board can be filled only by means of a Board resolution passed at a meeting of the Board and not by circulation. Therefore, the appointment of Mr. Kachi is invalid.

However, it is rather strange that **in the given case** Mr. Kachi has been appointed as an additional director to fill a casual vacancy in Board. Actually, additional directors are appointed by the Directors (if authorized by the Articles) to increase the Number of Directors within the legally prescribed limits and not to fill a casual vacancy.

In case Mr. Kachi had been appointed as an additional director not to fill a casual vacancy, his appointment could have been made by a resolution by circulation under Section 161(1) and he would have held office till the date of the next AGM or the last date when the next AGM should have been held, whichever is earlier.

In the given case, *as the AGM was due on 31st March, 2016 which is presumably the last date for holding it, therefore his appointment would terminate on 31st March, 2016.*

Space to write important points for revision

2016 - June [1] (d) Good Homes Ltd. was registered as a public company with 195 members as follows:

	No. of members
Directors and their relatives	35
Employees	12
Ex-employees	08
(shares were allotted when they were employees)	
Others	140
Total number of members	195

Board of Directors of the company takes a decision to convert the company into a private company. Being a Company Secretary in Practice, the Board of Directors seeks your advice about the steps to be taken for conversion of the company into a private company including reduction in the number of members, if necessary, as per the Companies Act, 2013. Advise the Board.

(5 marks) ***[CSPP P - 1]***

Answer:

A private company as per **Section 2(68)** cannot have more than **200** members. As per the requirement of the section present and former employees of the company are not to be counted for the purpose of **200** members. Hence, in the given question, the number of members of public company which is proposed to be converted into a private company is less than **200**. Therefore, it may be converted into private company.

The procedure for converting a public company into a private company is as under:

(i) Passing a special resolution authorizing the conversion and altering the articles so as to include therein the restrictions specified in **Section 2 (68)**.

(ii) Within **30** days of passing of the special resolution, **Form MGT – 14** with a copy of resolution along with explanatory statement under **Section 173** and amended copy of Article of Association as attachment along with prescribed filing fees payable.

(iii) Changing the name clause of the Memorandum of the company.

(iv) Obtaining the approval of the Tribunal as required by **Section 14(1)**. Application in **Form INC – 27** along with minutes of members meeting within **3** months from the date of passing of special resolution for alteration of articles to be sent for obtaining approval of Central Government.

(v) Filing of the documents along with a printed copy of the articles as altered with the Registrar within **15** days. **[Section 14 (2)]**.

Space to write important points for revision

2016 - June [2A] (Or) (i) The authorised share capital of Amaze Ltd. is ₹ 10 crore divided into equity shares of ₹ 100 each. The Board of Directors of the company decides to sub-divide these shares into shares of ₹ 10 each, so that the liquidity in dealing with shares at the stock exchange may become easier. Articles of association of the company are silent on the issue. The company is listed at Bombay Stock Exchange. As the Secretary of the company, what procedure you would follow to give effect to the Board's proposal under the provisions of the Companies Act, 2013?

(4 marks) ***[CSPP P-1]***

Answer:

Procedure for Sub-Division of Share Capital:

For sub-dividing the share capital of a company, the following procedural steps are required to be taken by the Board of Directors:

1. It must ensure that its articles of association contain a provision authorising it to sub-divide its shares. If there is no such provision, then the articles have to be altered in accordance with the provisions of **Section 14** of the **Companies Act, 2013**, before proceeding to sub-divide its shares.
2. Give twenty-one clear days' notice of the proposed sub-division of the shares of the company to the stock exchanges on which the securities of the company are listed.
3. In the case of a listed company, make an application to the stock exchange where the securities of the company are listed and any other stock exchange where the company proposes for getting its sub-divided shares listed.

4. Convene and hold a Board Meeting to:
   (i) Pass a resolution approving the proposed sub-division of the shares of the company;
   (ii) Fix time, date and venue for holding general meeting of the company to pass a special resolution, if so required by the articles for this purpose.
   (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting.
   (iv) Authorize the Company Secretary to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
5. Soon after the conclusion of the Board Meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.
6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.
7. In the case of a listed company, forward three copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges.
8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges.
10. File with the ROC, **Form MGT – 14** along with a certified copy of the resolution, the notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.
11. Give notice of compliance with the provisions of **Section 64** of the **Companies Act, 2013**, for the consolidation of the shares of the company, to the Registrar in **Form SH – 7**, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying

the shares consolidated. The Registrar will record the alteration in the memorandum of the company.

12. Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

Space to write important points for revision

2016 - June [2A] (Or) (ii) Board of Directors of Prince Ltd. decides to go for the issue of secured debentures of ₹ 100 each, to the extent of ₹ 10 crore. Further, as the company is going for the issue of secured debentures, it is required to create a debenture redemption reserve. The Board seeks your advice on the conditions to be fulfilled and compliance of the provisions of the Companies Act, 2013. Advise the Board. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 71(4) states that where debentures are issued by any company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

(a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend.

(b) The company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:

  (i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of **Clause (72)** of **Section 2** of the **Companies Act, 2013** DRR will be as applicable to NBFCs registered with RBI.

  (ii) For NBFCs registered with the RBI under **section 45-IA** of the **RBI (Amendment) Act, 1997**, 'the adequacy' of DRR will be **25%** of the value of debentures issued through public issue as per present **SEBI**

(Issue and Listing of Debt Securities) Regulations, 2008 and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be **25%** of the value of debentures issued through public issue as per present **SEBI (Issue and Listing of Debt Securities), Regulations, 2008** and also **25%** DRR is required in the case of privately placed debentures by listed company. For unlisted companies issuing debentures on private place basis, the DRR will be **25%** of the value of debentures.

(c) Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in **sub-clauses (a)** to **(d)** and **(ee)** of **Section 20** of the **Indian Trusts Act, 1882**;

(iv) in unencumbered bonds issued by any other company which is notified under **sub-clause (f)** of **Section 20** of the **Indian Trusts Act, 1882**;

(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year.

Space to write important points for revision

2016 - June [2A] (Or) (iii) Rohit, a member of Happy (Pvt.) Ltd. transfers his shares to Yash. Yash submitted the duly executed instrument of transfer. The Board of Directors of the company at its meeting rejected the transfer

arbitrarily without assigning any reason. The Articles of the company confer upon the Board to approve or disapprove the transfer.

Examining the provisions of the Companies Act, 2013:

(a) Advise Yash, the legal remedy available to him.

(b) What shall be your answer in case a relative of Yash wants to take any action against the company to register the transfer?

(4 marks) ***[CSPP P-1]***

Answer:

(a) Refusal and Appeal Against refusal to Transfer of Shares in a Private Company:

According to **Section 58(1)** of the Act, if a private company limited by shares refused, whether in pursuance of any power of the company under its articles or otherwise, 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, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. While refusing to register transfer of shares, it is necessary that the directors must act in a good faith and for the benefit of a company and shareholders and not for some other purpose. Power of refusal to register transfer of shares should be exercised strictly on the grounds specified in the Articles and not on the basis of any other grounds.

(b) According to **Section 58(3)** the transferee i.e. Yash, may appeal in the case of appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in the 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, as the case may be, was delivered to the company.

In case, relative of Yash wants to take any action against the company, he cannot do so as in accordance with **Section 58(3)** the right to appeal in case of refusal has been restricted to only transferee.

Space to write important points for revision

2016 - June [3] (a) During the financial year 2015-16, Deepak was holding 20% of the paid-up share capital in CML Ltd. He wants to increase his shareholding further by 10%, so that he becomes entitled to exercise more than 25% voting rights. Deepak seeks your advice on the obligations to which he and the company be subject to in this regard. Advise.

(4 marks) ***[CSPP P-1]***

(b) Paresh, a shareholder of Perfect Ltd. expired on 1st January, 2016. Raman, the legal heir informs the company about the death of Paresh and submits an application to the company along with the succession certificate issued by a Delhi Tribunal having jurisdiction in the case. The Board of Directors of the company considers Raman's application and approves the transmission of shares in his name. Draft a resolution to effect the above transmission of shares. **(4 marks)** ***[CSPP P-1]***

Answer:

(a) In terms of **Regulations 3(1)** of **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**, an acquirer, who (along with persons acting in concert, if any) holds less than **25%** shares or voting rights in a target company and agrees to acquire shares or acquires shares which along with his/person acting in concert's existing shareholding would entitle him to exercise **25%** or more shares or voting rights in a target company, will need to make an open offer before acquiring such additional shares.

Accordingly, he has to comply with the obligation relating to open offer including appointment of merchant banker, public announcement etc.

Note: It is presumed that the company is listed company.

In case of an unlisted public limited company:

He can acquire shares from other shareholder and get it register in its name. The share transfer instrument shall be in **Form SH-4**. Transferor shall pay share transfer stamp duty. On submission of duly filled and stamped transfer form along with relevant share certificates to

the company, the company shall register the transfer and endorse the share certificates.

(b) Specimen of Board Resolution Approving Registration of Transmission of Shares:

"**RESOLVED THAT:**

(i) Transmission of - nos. of fully paid equity shares of the company bearing distinctive numbers_____to_____(both numbers inclusive) presently registered in the name of Shri Paresh who has been reported as deceased on 1st Jan, 2016 in the district of_____which is situated in the state of U.P. in the name of Shri Raman son of Shri Jai resident of_____ be and is hereby approved.

(ii) Since the company has received a letter from the said Shri Raman, intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name; and

(iii) Shri Amit, Company Secretary, be and is hereby authorized to enter the name of the said Shri Raman, in the register of members of the company and send the relevant share certificates to him after appropriately endorsing them in his name."

Space to write important points for revision

2016 - June [3] (b) The promoters of Welcome Company incorporated on 8th June, 2015 has entered into a contract with A on 10th May, 2015 for supply of goods. After incorporation, the company does not want to proceed with the contract. As a company advisor, advise the management of the company, referring to the provisions of the Companies Act, 2013.

(5 marks) ***[CMA PAPER - 13]***

Answer:

(i) It is not only the company which is allowed, under the Specific Relief Act, to adopt and enforce its pre-incorporation claims against third parties, Section 19 of the Specific Relief Act also allows, the other party to enforce the contract against the company if (i) the company had adopted the same after incorporation, and (ii) the contract is warranted by the terms of incorporation. Contracts like preparation and printing of the memorandum, and articles, remunerating the professionals, if any, for securing the registration of the company, renting premises, hiring secretarial staff are envisaged under the Act.

(ii) Pre-incorporation contracts in general are *void ab initio*, and hence not binding on the company. However, under Section 19(e) of the Specific Relief Act, 1963, the party to the contract can enforce the contract against the company, if:

(a) The company had adopted the same after incorporation, and

(b) The contract is warranted by the terms of incorporation.

Thus, unless the company adopts the contract, the other party cannot enforce the same against the Company. There shall be no personal liability for the Promoter, if the agreement provides that:

(i) His liability shall cease once the Company adopts the agreement, and

(ii) Either party may rescind the agreement, if the Company does not adopt it within a specified time.

Space to write important points for revision

2016 - June [3] (d) Examine the validity of the Board of Directors' decision in respect of the following appointments of directors as per the provisions of the Companies Act, 2013:

(i) Board of Directors of a company which is not listed at any of the stock exchanges, having a turnover of ₹ 500 crore decides not to appoint women director on the company's Board.

(ii) Board of Directors of a company, which is not listed at any of the stock exchanges, decides not to appoint a resident director.

(iii) Board of Directors of a company, having paid-up share capital of ₹ 50 crore decides not to appoint an independent director. The company is listed at Bombay Stock Exchange. **(4 marks)** ***[CSPP P-1]***

Answer:

(i) In accordance with the provisions of **Companies Act, 2013** as contained in first Proviso to **Section 149(1)** read with **Rule 3** of **Companies (Appointment & Qualification of Directors) Rules, 2014**, the following class of companies shall appoint at least one woman director on the Board of the company:

1. Every listed company.
2. Every other public company having:
   (a) Paid-up share capital of ₹ **100** crore or more; or
   (b) Turnover of ₹ **300** crore, or more.

Therefore, the company is required to appoint a woman director since it falls within the criteria of appointment. Company's decision not to a woman director is violative of the provisions.

(ii) **Resident Director**

The decision of the company not to appoint a Resident Director, is violative of the provisions of **Section 149(3)** of the **Companies Act, 2013**, as every company is required to appoint at least one director who has stayed in India for a total period of not less than **182** days in the previous calendar year.

(iii) **Independent Director**

Section 149(1) of the Act provides that every listed public company shall have at least one-third of the total number of directors as Independent Directors.

Rule 4 of **Companies (Appointment and Qualification of Directors) Rules, 2014** provides that the following class or classes of companies shall have at least **2** directors as Independent Directors:

(i) The public companies having paid up share capital of ₹ **10** crore or more; or

(ii) The public companies having turnover of ₹ **100** crore or more; or

(iii) The public companies which have, in aggregate outstanding loans, debentures and deposits, exceeding ₹ **50** crore.

In the given case since the company is listed at Bombay Stock Exchange, it is required to appointment at **1/3rd** of the total number of directors as Independent Directors. Therefore, Board's decision not to appointment Independent Director is violative of the provisions of the **Companies Act, 2013**.

Space to write important points for revision

2016 - June [4] (b) Mr. Biron was appointed as the Managing Director of NIVA LTD. for a period of 5 years w.e.f. 1st January, 2014. Since his work was found unsatisfactory, his services were terminated from 20th October, 2015 by paying compensation for the loss of office as provided in the agreement entered into by the company. Later, the company discovered that during his tenure of office Mr. Biron was guilty of many corrupt practices and that he should have been removed without payment of compensation.

Advise the company whether the services of Managing Director can be terminated without payment of compensation as provided in the agreement and whether the company can recover the amount already paid to Mr. Biron.

(5 marks) ***[CMA PAPER - 13]***

Answer:

According to Section 202 of the Companies Act, 2013 a Managing Director is entitled to be paid compensation for loss of office. However, Section 202(2)(e) of the Companies Act, 2013 provides that no compensation is payable if the director concerned has been guilty of fraud or breach of trust or of gross negligence in or gross mismanagement in the conduct of the affairs of the Company.

However, **in the present case,** compensation amount was paid and subsequently the misconduct on the part of Mr. Biron was noticed by the company. In the case of Bell -*Vs*-Lever Bros (1932), Lever Bros removed their Managing Director of a subsidiary by paying them compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been

removed without compensation. As action was then commenced to recover back the compensation money. It was held that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him.

Thus, in normal circumstances, the company (NIVA Ltd.) is entitled to terminate the services of Mr. Biron as Managing Director without payment of compensation as he was guilty of many corrupt practices. **In the present case,** however, the company will not be able to recover the compensation money already paid to Mr. Biron, Managing Director.

Space to write important points for revision

2016 - June [4] (d) Explaining the provisions of the Companies Act, 2013 relating to appointment of a debenture trustee, examine the validity of appointment of the following persons as debenture trustee by a company going for issue of debentures:

(i) Sachin has pecuniary relationship with the company amounting to 1% of the total income during the two immediately preceding financial years.

(ii) Akash is indebted to an associate company of the company going to appoint such a trustee. **(4 marks)** ***[CSPP P-1]***

Answer:

According to **Section 71(5) of Companies Act, 2013**, the appointment of debenture trustees is compulsory in case the prospectus is issued to more than **500** persons for subscription of debentures. Further, the **Rule 18** specifies that for secured debentures issued by any type of company, the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than **60** days after the allotment of the debentures.

The conditions governing the appointment of debenture trustees under **sub-section (5)** of **Section 71** are prescribed under **Rule 18(2)** of the **Companies (Share Capital and Debentures) Rules, 2014** as under:

(a) The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debentureholders.

(b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

(c) A person shall not be appointed as a debenture trustee, if he:

(i) Beneficially holds shares in the company.

(ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company.

(iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.

(iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary or its holding company.

(v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.

(vi) Has any pecuniary relationship with the company amounting to **2%** or more of its gross turnover or total income or ₹ **50** lakhs or such higher amount as may be prescribed, whichever is lower, during the **2** immediately preceding financial years or during the current financial year.

(vii) Is relative of any promoter or an person who is in the employment of the company as a director or key managerial personnel.

Taking into account the above conditions, answers to sub-question are:

(i) Yes, Sachin can be appointed as a debenture trustee since his pecuniary relationship with the company is less than **2%**.

(ii) No, Akash cannot be appointed since he is indebted to an associate company of the company going to appoint the debentures trustee, since he does not fulfill the condition.

Space to write important points for revision

2016 - June [5] (a) Referring to the provisions of the Companies Act, 2013, examine the validity of each of the following contributions:

(i) The Board of Directors of Laxmi Ltd. decides to contribute to charitable funds, a sum of 10% of the company's average profits earned for the 5 years immediately preceding the financial year 2015-16.

(ii) The Board of Directors of MNR Ltd. incorporated on 2nd April, 2015 decides to pay 10% of the profit of the company earned during the period of 6 months in the financial year 2015-16, towards political contribution to some political parties. **(4 marks)** ***[CSPP P-1]***

(b) A general meeting of the members of RST Ltd. was called to transact certain special business. Before the scheduled day and time of the meeting, the Chairman of the meeting *suo moto* due to certain personal reasons adjourned the meeting. Certain members of the company challenge the decision of the Chairman on the ground that the Chairman's action to adjourn the meeting is violative of the provisions of the Companies Act, 2013. Decide with reasons in brief:

(i) Whether the contention of the members be tenable?

(ii) Whether the company is required to send a fresh notice for the adjourned meeting as the articles of association are silent on the issue?

(iii) In case the meeting is a requisitioned meeting and on the scheduled day and time, the required quorum is not present, state whether the members on their own can hold the meeting and pass necessary resolutions. **(4 marks)** ***[CSPP P-1]***

(c) Every listed company and certain class or classes of public companies as prescribed under Rules are required to have independent directors on its Board. Sahyajog Ltd., a listed company, has appointed Raghu as one of the independent directors on its Board. Being the Company Secretary of the company, you have been asked by the management to suggest a format of the declaration to be given by the independent director under **Section 149(6).** Advise the company. **(4 marks)** ***[CSPP P-1]***

Answer:

(a) (i) **According to Section 181, the Board of Directors of a company may contribute to *bona fide* charitable and other funds:**

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five percent of its average net profits for the three immediately preceding financial years.

Accordingly, the Company in this case can contribute the said contribution only by prior permission by way a resolution passed by the general meeting of the members. As the permissible limit is **5%** of average net profits for three immediately preceding financial years.

(ii) **Prohibition and Restrictions Regarding Political Contribution**:

According to **Section 182 (1)** the following companies are barred from making political contributions:

- Government company
- The company which has been in existence for less than **3** financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in **sub-section (1)** or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half percent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for making and the acceptance of the contribution authorized by it.

The decision of the Board in the given is also violative of the provisions of the **Companies Act, 2013** viz. (i) the company has been in existence for less than one year and (ii) the contribution to be made is beyond the limit of **7-1/2%**. Therefore, the company cannot pay the said contribution.

Note:

Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.

(b) For a valid adjournment of a General Meeting, the holding of the meeting at its scheduled time is necessary. A duly convened meeting should not be adjourned arbitrarily by the Chairman. The Chairman may adjourn a meeting with the consent of the members and shall adjourn a meeting if so decided by the members. The meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned meeting.

The Chairman may, with the consent of any meeting at which a Quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place and may adjourn the meeting for *bona fide* reasons. Once a meeting is called, the Chairman cannot adjourn it arbitrarily, its continuance or adjournment rests entirely on the will of the members. (**Regulation 49** of **Table F** of **Schedule I** : **Companies Act, 2013**).

Accordingly,

(i) Contention of the members is tenable.

(ii) Para **15.2, 15.3** and **15.4** of **SS-2** provide for provisions relating to notice of adjourned meeting and states that if a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained herein above relating to Notice.

15.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an

English newspaper in English language, both having a wide circulation in that district.

15.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, or at such other time and place as may be determined by the Board.

(iii) In case of requisitioned meeting, if the required Quorum is not present, the meeting stands cancelled/dissolved. Members presents, in the absence of Quorum cannot hold the meeting. If they hold the meeting and pass the resolutions, these will not be valid and not binding upon the company. **(Para 15.5 of SS-2)**.

(c)

M/s,

Dear Sir,

I undertake to comply with the conditions laid down under **section 149(6)** and **schedule IV** of the **Companies Act, 2013** in relation to conditions of independence and in particular.

(a) I declare that up to the date of this declaration, apart from receiving director's remuneration, I did not have any material pecuniary relationship or transactions with the Company, its promoters, its directors it senior management or its holding company, its subsidiary and associates as named in the Annexure thereto which may affect my independence as director on the Board of the Company. I further declare that I will not enter into any such relationship/transaction; however, if and when I intend to enter into any such relationship/transactions, whether material or non-material I shall seek prior approval of the Board. I agree that I shall cease to be an independent director from the date of entering into such relationship/transaction.

(b) I declare that I am not related to promoters or persons occupying management positions at the board level or at one level below the board

and also have not been an executive of the Company in the immediately preceding three financial years.

(c) I was not a partner or an employee or was also not partner or an employee during the preceding three years, of any of the following:
   (i) The firm of auditors or Company Secretary in Practice or cost auditors of this company or its holding subsidiary or associate company; and
   (ii) the legal firm(s) and consulting firms(s) that has or had any transaction with company, its holding subsidiary or associate company amounting to **10%** or more of gross turnover of such firm.

Thanking You,

Yours faithfully,
Raghu

Date :
Place:

Space to write important points for revision

2016 - June [5] (d) The Board of Directors of PQR Ltd. wishes to accept deposits. As a Company Secretary of PQR Ltd., prepare the check list for secretarial compliance for acceptance of deposits as per the Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

Answer:

Check List of Secretarial Compliance for Acceptance of Deposits as per Companies Act, 2013:

Check list of secretarial compliance for acceptance of deposits under **Companies Act, 2013** are discussed below. The Company Secretary should check:

1. Whether proper Board Meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.

3. Whether the said resolution has been filed with Registrar in **Form MGT-14** within **30** days of passing of such resolution.
4. Whether Board Meeting has been held to obtain the approval for the draft Circular/Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in **Form DPT-1** for registration.
6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in **Form DPT-2** at least seven days before issuing circular or circular in the form of advertisement.
7. Whether the company has obtain the rating unless exempted, (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company.
8. Whether the company has issued circular/form of advertisement after **30** days from the date of filing of a copy of Circular/Form of Advertisement with the Registrar.
9. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in **Form DPT-1** and in addition to such issue of circular the company has published the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.
10. Whether the company has uploaded the copy of the circular on the Company's website, if any.
11. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.

12. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.
13. Whether the company has filed deposit return in **Form DPT-3** by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.
14. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in **Form DPT-4**.

Space to write important points for revision

2016 - June [6] (a) You being the Secretary of Aryan Ltd., have been asked by the Board of Directors to make a report on Corporate Governance as required under clause 49* of the listing agreement. State the procedure you would follow and the information you would include in the report relating to:

(i) General meeting of the company; and

(ii) Nomination and Remuneration Committee. **(4 marks)** ***[CSPP P-1]***

Note:
** Regulation 19 and 21(1)(2) and Part E of Schedule II of the SEBI (LODR) Regulations, 2015.*

Answer:

Under **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015** a listed company is required to submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchanges(s) within fifteen days from close of the quarter.

Procedure for making report on Corporate Governance:

As per the **SEBI (LODR) Regulations, 2015**, the company shall have a separate section on Corporate Governance in the Annual Report of the company with a detailed compliance report on Corporate Governance. The same is also to be disclosed at the website of the company.

- Prepare a checklist with regard to all the information required to be included in the report.

- To check all the related documents from which information for preparing the report needs to be extracted.
- The report shall be signed either by the compliance officer or the chief executive officer of the listed entity.

Information to be included in Corporate Governance Report w.r.t. :

(i) **Nomination and Remuneration Committee:**
   (a) brief description of terms of reference;
   (b) composition, name of members and chairperson;
   (c) meeting and attendance during the year;
   (d) performance evaluation criteria for independent directors.

(ii) **General body meetings:**
   (a) location and time, where last three annual general meetings held;
   (b) whether any special resolutions passed in the previous three annual general meetings;
   (c) whether any special resolution passed last year through postal ballot- details of voting pattern;
   (d) person who conducted the postal ballot exercise;
   (e) whether any special resolution is proposed to be conducted through postal ballot;
   (f) procedure for postal ballot.

Space to write important points for revision

2016 - June [6] (b) Board of Directors of Princeton Ltd. in the absence of adequate profits in the financial year 2014-15, wants to recommend dividend out of company's reserves. Advise the Board about the conditions to be complied with and the procedure to be followed in accordance with the provisions of the Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

(c) ABC Ltd. declared dividend, but failed to make the payments to shareholders. Advise the company about the consequence for such default and also list out the circumstances under which no prosecution lies in spite of the fact that the company fails to pay dividend even after declaration. **(4 marks)** ***[CSPP P-1]***

Answer:

(b) **Rule 3** of the **Companies (Declaration and Payment of Dividend) Rules, 2014** makes rules for declaration of dividend out of reserve.

In the event of inadequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely:

(1) The rate of dividend shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. However, the sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

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

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below fifteen percent of the company's paid - up share capital as appearing in the latest audited financial statement.

4th proviso to **Section 123(1)** provides that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year.

The procedure is as follows:

(1) Give notice to all the directors of the company for holding a Board Meeting. In the meeting take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if the company does not have a Company Secretary to issue the notice of the AGM on behalf of the Board of Directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.

(2) Ensure that the **Companies (Declaration and Payment of Dividend) Rules, 2014** are complied with.
(3) While calculating the profits of the previous years, take only the net profit after tax.
(4) Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.
(5) In the case of listed companies, inform the Stock Exchange with which the shares of the company are listed within **30** minutes of closure of Board Meeting about decision to recommend declaration of dividend out of Company's Reserves. **[Regulation 30** of **SEBI (LODR) Regulations, 2015].**
(6) Issue notices in writing at least **21** days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
(7) In the case of listed companies, forward copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.
(8) Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
(9) Issue dividend warrants within **30** days from the date of declaration of dividend. Rest of the procedural steps are same as in case of payment of final dividend.

(c) Punishment for Failure to Distribute Dividend (Section 127): Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and (b) the company shall be liable to pay simple interest at the rate of

eighteen percent per annum during the period for which such default continues.

No offence under this section shall be deemed to have been committed:

(a) where the dividend could not be paid by reason of the operation of any law;

(b) 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 been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Space to write important points for revision

2016 - June [6] (d) Star Gold Ltd., declared and paid dividend in time to all its equity holders for the financial year 2014 – 15, except in the following two cases:

(i) Mrs. Sheela, 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 about this discrepancy.

(ii) Dividend amount of ₹ 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

(5 marks) ***[CMA PAPER - 13]***

Answer:

(i) **Section 127 of the Companies Act, 2013** provides for punishment for failure to distribute dividend on time. One of such situations is where

a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela 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 circumstance, 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.

Space to write important points for revision

2016 - Dec [1] (a) Watson Ltd., a company incorporated in Australia, has a place of business through an agent in Mumbai. The agent transacts the business on behalf of the company through electronic mode. As regards Watson Ltd., answer the following:

(i) Whether Watson Ltd. shall be called a foreign company within the meaning of the Companies Act, 2013?

(ii) What are the regulatory requirements under the Companies Act, 2013 to be complied with by such a company which has established its place of business in India?

(iii) State the regulatory provisions under the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2016. **(5 marks)** ***[CSPP P - 1]***

Answer:

(a) (i) In accordance with the provisions of the **Companies Act, 2013**, as contained **under Section 2(42)** '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;
(b) conducts any business activity in India in any other manner.

In this case since the foreign company (incorporated in Australia) transacts its business through an agent by electronic mode in Mumbai, it is a foreign company.

(ii) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration **[Section 380(1)]**:

(a) a certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;
(b) the full address of the registered or principal office of the company;
(c) a list of the directors and secretary of the company with particulars;
(d) the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(f) particulars of opening and closing of a place of business in India on earlier occasions;
(g) declaration that none of the directors of the company or authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; or
(h) other prescribed particulars.

According to **Section 380(3) of the Companies Act, 2013** and **Rule 3(3)** of the Companies (Registration of Foreign Companies) **Rules, 2014** where any alteration is made or occurs in the document

delivered to the Registrar for registration under **Sub-section (1) of Section 380**, the foreign company shall file with the Registrar, a return in **Form FC-2** along with the fee as provided in the Companies (Registration Offices and Fees) **Rules, 2014** containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

(iii) A foreign company or individual planning to set up business operations in India can do so through a Liaison Office/Representative Office, Project Office or a Branch Office. The Foreign Exchange Management (Establishment in India of Branch and Office or Other Place of Business) **Regulations, 2016** govern the opening and operation of such offices Accordingly, Companies incorporated outside India, desirous of opening a Liaison Office or Branch Office in India have to make an application in **Form FNC1** through an **AD Category I** bank which is authorized by RBI to forward such application to the Chief-Manager-in-charge of RBI Foreign Exchange Department, FDI division, Central Office, Mumbai-400001.

2016 - Dec [1] (b) Ruchi (Pvt.) Ltd., a company incorporated under the provisions of the Companies Act, 2013, gives you the following information:

Paid-up equity share capital	₹ 40 lakh
Average annual turnover during the last 3 years	₹ 1 crore

The Board of Directors of the company decides to convert the company into a One Person Company (OPC). Examining the provisions of the Companies Act, 2013, advise the Board about the statutory requirements to be complied with for giving effect to the Board's proposal.

(5 marks) ***[CSPP P - 1]***

Answer:

In terms of **Rule 7** of Companies (Incorporation) **Rules, 2014** a private company other than a company registered under **section 8 of the Companies Act, 2013,** having paid-up share capital of ₹ 50 lacs or average annual turnover during the relevant period is ₹ 2 crore or less may convert

itself into One Person Company by passing a special resolution in the general meeting.

Before passing such resolution, the company shall obtain No Objection in writing from members and creditors. The OPC shall file copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in **Form No. MGT-14.**

The company shall file an application in **Form No. INC-6** for its conversion into OPC along with fees as provided in the Companies (Registration Offices and Fees) **Rules, 2014**, by attaching the following documents, viz.:

1. The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid-up share capital of the company is ₹ 50 lacs or less and average annual turnover is less than ₹ 2 crore, as the case may be.
2. The list of members and list of directors.
3. The latest Audited Financial Statement, and
4. The copy of No Objection letter of secured creditors.

On being satisfied with compliance of above-mentioned requirements, the Registrar shall issue the Certificate of Incorporation in the same manner as its first registration.

Accordingly, since the paid-up equity share capital and an average annual turnover of the company are within the prescribed limits as referred above, it can be converted into an OPC, by following the procedure as stated above (**Rule 7** of **Companies (Incorporation) Rules, 2014** and also by alteration of Memorandum and Articles of Association of the company as per the provisions of **Section 18 of the Companies Act, 2013**).

Space to write important points for revision

2016 - Dec [1] (c) Priya Ltd. has passed a resolution in the general meeting of the company for alteration of articles of association, thereby adopting new set of articles of association by following the statutory procedure in

accordance with the provisions of the Companies Act, 2013. In this connection, answer the following:

(i) What are the implications of adoption of new articles of association?

(ii) Draft a specimen resolution with explanatory statement for alteration of the articles and adoption of new set of articles of association.

(5 marks) ***[CSPP P-1]***

Answer:

(i) **Section 14 of the Companies Act, 2013** lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration shall be filed with the Registrar together with a printed copy of the altered articles within a period of 15 days. **[Section 14(2)].** Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below.

(i) by adoption of new set of articles;

(ii) by addition/insertion of an article;

(iii) by amendment of a specific article; or

(iv) by substitution of a specific article.

Implications of adoption of new articles of association:

In terms of **Section 14(3)**, any alteration of the articles registered with Registrar shall by valid as if it were originally in the articles.

All members of the company become bound by a valid alternation whether they voted for or against it. ***(Hari Chandana Yoga Deva v. Hindustan Co-op Insurance Society Ltd. AIR 1925 Cal. 690.)*** A provision of the Articles which has the effect of limiting the company's share capital to a fixed amount would have no effect being contrary to the Act. ***[Muheer Hemant Mafatlal v. Mafatlal Industries Ltd. (1987) 89 Bom LR 86 (Bom)].***

Power of alteration can be exercised only in good faith in the interest of the company as a whole. A discriminatory amendment depriving some members of their rights qua members would be struck down as

invalid. ***[Tapas Sinha Roy v. Linkman Services P. Ltd. (2007) 77 CLA 340 (CLB)].***

(ii) "RESOLVED THAT the Article of Association of the Company by and are hereby replaced by the adoption of new set of articles as provided in **Tables F, G, H, I & J** in **Schedule I** as the case may be of the **Companies Act, 2013.**

Explanatory Statement

The present Articles of Association of the company were adopted in ..... The Act has since been amended several times. Moreover certain other Acts have affected various provisions of the **Companies Act, 2013.** The directors of the company believe that it is desirable that the articles of association of the company be revised so that they fully reflect not only the law governing the company and rules and regulations made thereunder, but is also in conformity with modern secretarial practices and complies with the requirements of the listing agreements of the stock exchanges on which the company's shares are listed.

Since the proposed alterations, deletions, insertions etc. to the present articles of association are numerous, it is more convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Space to write important points for revision

2016 - Dec [2] (a) Ajay Ltd. had given a loan of ₹ 10 crore to Binoy Ltd. and created a charge on the assets of the company. But Binoy Ltd. failed to register the charge within the stipulated time. Can Ajay Ltd. register the charge with the Registrar of Companies? If yes, what shall be the procedure? **(4 marks)** ***[CSPP P-1]***

Answer:

Yes, Ajay Ltd. can register the charge, According to **Section 78** where a company fails to register the charge within the period specified above, the person in whose favour the charge is created may apply to the Registrar for registration of the charge alongwith the instrument created for the charge in **Form No. CHG-1 or Form No. CHG-9,** as the case may be, duly signed along with fee. The registrar may, on such application, give notice to the

company about such application. The company may either itself register the charge or shows sufficient cause why such charge should not be registered. On failure on part of the company, the Registrar may allow registration of such charge within fourteen days after giving notice to the company.

Where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company, the amount of any fee or additional fees paid by him to the Registrar for the purpose of registration of charge.

Space to write important points for revision

2016 - Dec [2] (b) Mr. Raman is a Managing Director of X company. He resigns from his office as a result of amalgamation of the X company with the other body corporate. Further he is appointed as the Managing Director of the body corporate resulting from the amalgamation. State in the light of the Companies Act, 2013 whether in this situation, is company liable towards Managing Director to compensate for the loss of office after his resignation.

(5 marks) ***[CMA PAPER - 13]***

Answer:

According to Section 202 of the Companies Act, 2013, a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, in certain situations, no compensation shall be made by the company. As per the situation given in Section 202(2)(a) , where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation; no company shall make payment by way of compensation for loss of office to a managing or whole-time director or manager.

Hence, in the above case Mr. Raman, a Managing Director of X company resigns from his office as a result of amalgamation of the said company with the other body corporate. He is appointed as Managing Director of the Body

Corporate resulting from the amalgamation. So accordingly, **as per the above stated provision,** company shall not make compensation to Mr. Raman for the loss of office due to his resignation on account of amalgamation of the company with other body corporate.

Space to write important points for revision

2016 - Dec [2] (c) Charminar Ltd. raised money through prospectus with the object of starting a new automobile spare parts manufacturing unit. After investing in this manufacturing unit, few crore of rupees are left unutilised and the company proposes to invest the same for some other purpose than what is mentioned in the prospectus. Advise. **(4 marks)** ***[CSPP P-1]***

Answer:

The **Rule 32** of **Companies (Incorporation) Rules, 2014** contains the provisions for change of objects for which the money is raised through prospectus:

(1) Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:

(a) the total money received;
(b) the total money utilized for the objects stated in the prospectus;
(c) the unutilized amount out of the money so raised through prospectus,
(d) the particulars of the proposed alteration or change in the objects;
(e) the justification for the alteration or change in the objects;
(f) the amount proposed to be utilised for the new objects;
(g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;

(h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;

(i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.

(2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with dispatch of postal ballot notices to shareholders.

(3) The notice shall also be placed on the website of the company, if any.

In addition to the above specific procedure, the company should alter the objects clause of the Memorandum of Association of the company by following the procedure for the Alteration of Memorandum of the Association of the Company as provided **u/s 13 of the Companies Act, 2013.**

On the successful completion of the procedure as mentioned herein above, and passing of the special resolution by postal ballot Charminar Ltd., may invest the unutilized funds/money for some other purpose which is different from an object of starting a new automobile spare parts manufacturing unit for which the money is raised through the issue of prospectus.

Space to write important points for revision

2016 - Dec [2] (d) Rise Ltd. was incorporated under the provisions of the Companies Act, 2013 and certificate of incorporation was issued by the Registrar of Companies (ROC), New Delhi. Due to inadvertence, the name of the company was found to be similar to the name of another company already registered with the ROC. The ROC on knowing this fact serves a notice upon the company for rectification of the name. Referring to the provisions of the Act, answer the following:

(i) What action shall the company take in response to the notice served upon the company by the Registrar of Companies?

(ii) What will be the position in case the directors of the company *suo moto* apply to the Central Government for rectification of name of the company?

(iii) What are the implications of rectification of name of the company on the contracts already entered into by the company? Also, state whether the change/rectification shall result in the dissolution of the company. **(4 marks)** ***[CSEP P-1]***

Answer:

In accordance with the provisions of the **Companies Act, 2013,** as contained **under section 16(1)(a),** if a company is registered through inadvertence or otherwise by a name which is identical with or too nearly resembles, the name by which a company in existence has been previously registered, the company itself shall change the name by passing of an ordinary resolution at the direction of the Central Government. In such a case, the company should pass an ordinary resolution within 3 months from the date of the issue of such direction. There is no time limit for Central Government to issue such direction.

Further, according to **Section 16(1)(b) of the Companies Act, 2013,** a registered proprietor of a trademark may apply to the Central Government within 3 years of incorporation or registration or change of name of the company whether under this Act or any previous company law for issuing direction to the company for change of its name on the ground that the name of the said company is identical with or too nearly resembles to a registered trademark of such proprietor under the **Trademarks Act, 1999.** Where, in the opinion of the Central Government the name is identical with or too nearly resembles to an existing trademark, it may direct the company to change its name. And, the company shall change its name or new name as the case may be, within a period of 6 months from the date of issue of such direction by adopting an ordinary resolution.

Accordingly:

(i) The company shall apply to the Central Government for rectification of name by filing of **Form INC-1** for the name availability and then by passing an ordinary resolution within 3 months from the date of issuance of such direction and the same be intimated to the concerned ROC for the issuance of the Fresh Certificate of Incorporation of the Company as prescribed **under Section 16(2) of the Companies Act, 2013.**

(ii) If the directors *suo moto* apply to the Central Government for the change of name of the company then they have to follow the regular procedure of the change of name of the company as prescribed **under Section 13 of the Companies Act, 2013.**

(iii) In third case, change of name shall not affect any rights or obligations of the company (i.e. there will be no adverse effect on the contracts already entered by the company). Further, the change of name of the company does not result in the company's dissolution. And, the fresh Certificate of Incorporation issued on the approval of the change of name of the company would not be treated as given for reforming or re-incorporating the company as a new entity since the salient feature of the company of the continuance existence of the company would remain in force even after completion of the procedure for the change of name of the company.

Space to write important points for revision

2016 - Dec [2A] (Or) (i) Board of Directors of Western Ltd. decides to issue equity shares to the extent of ₹ 10 crore on private placement basis. Explain the procedure the company should follow to give effect to the Board's proposal. **(4 marks)** ***[CSPP P-1]***

Answer:

1. Hold the board meeting and pass board resolution for convening the meeting of members and approving draft notice of meeting of members.
2. Hold the general meeting and pass the special resolution.
3. Send letter of offer in **Form PAS - 4** along with application form to the proposed subscribers, whose names are recorded by the company prior to the invitation subscribe.
4. File **Form MGT -14** along with the fees as provided in the Companies (Registration of Offices and Fees) **Rules, 2014,** with the Registrar within 30 days of passing the resolution.
5. The explanatory statement annexed to the notice for the general meeting required **u/s 102** shall disclose the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.

6. If the said offer or invitation is for non-convertible debentures, it shall be sufficient if the company has passed a previous special resolution during year for all the offers or invitation for such debentures.
7. The offer or invitation shall not be made to not more than 200 persons in the aggregate in a financial year excluding QIBs and employees offered securities under ESOP.
8. The value of such offer or invitation per person shall be with an investment size of not less than 20,000 rupees of face value of the securities.
9. All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
10. The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank Account from where such payments for subscriptions have been received and the monies payable on subscription to securities to be **66 PP-ACL&P** held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
11. The company shall maintain a complete record of private placement offers in **Form PAS-5.**
12. File **Form PAS-5** along with the private placement offer letter in **Form PAS-4** with the Registrar with fee as provided in Companies (Registration Offices and Fees) **Rules, 2014** and where the company is listed, with the Securities and Exchange Board within a period of 30 days of circulation of the private placement offer letter.

13. A return of allotment of securities **under section 42** shall be filed with the Registrar within fifteen days of allotment in **Form PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) **Rules, 2014** along with a complete list of all security holders containing:

(i) The full name, address, Permanent Account Number and E-mail ID of such security holder;
(ii) The class of security held;
(iii) The date of allotment of security;
(iv) The number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

14. Issue share certificates and update minutes book and registers.
15. Company shall intimate the details of allotment of securities to depository immediately on allotment of such shares.

Space to write important points for revision

2016 - Dec [3] (d) Explaining the provisions of the Companies Act, 2013 and the rules thereof relating to the appointment of audit committee, its composition and the role played by such committee, state whether the following companies are required to appoint such committee:

(i) A public company having a turnover of ₹ 900 crore.
(ii) A public company which has aggregate outstanding deposits of ₹ 100 crore. **(4 marks)** ***[CSPP P-1]***

Answer:

As per **Section 177(1),** the Board of Directors of every listed company and the following prescribed companies are required to constitute Audit Committee:

(i) all public companies with a paid up capital of ten crore rupees or more;
(ii) all public companies having turnover of one hundred crore rupees or more;
(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Composition of an Audit Committee:

In terms of **Section 177(2) of the Companies Act, 2013,** the Audit Committee shall consist of a minimum of three directors with independent

directors forming a majority. Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

Role of Audit Committee:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board.

Terms of reference as prescribed by the board shall inter alia, include, –

(a) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
(In case of Government Companies, in Clause (1) of sub-section (4) of Section 177, for the words "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted – Exemption Notification dated 05-06-2015)

(b) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(c) examination of the financial statements and the auditors' report thereon;

(d) approval or any subsequent modification of transactions of the company with related parties;
The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed under rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014.
Further in case of transaction, other than transactions referred to in Section 188 (Related Party Transactions), and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.
In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is

authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

The provisions of this clause shall not apply to a transaction, other than a transaction referred to in Section 188, between a holding company and its wholly owned subsidiary company.

(e) scrutiny of inter-corporate loans and investments;

(f) valuation of undertakings or assets of the company, wherever it is necessary;

(g) evaluation of internal financial controls and risk management systems;

(h) monitoring the end use of funds raised through public offers and related matters.

Accordingly,

(i) A public company having turnover of ₹ 900 crore is required to constitute Audit Committee.

(ii) A public company which has aggregate outstanding deposits of ₹ 100 crores are required to constitute Audit Committee.

Space to write important points for revision

2016 - Dec [5] (b) Explaining the meaning of the term 'related party' in relation to a company under the provisions of the Companies Act, 2013, decide whether the following shall be treated as 'related party':

(i) Kamal, a director of Deep Ltd. holds 1% in the company's paid-up share capital.

(ii) Fair Ltd. is an associate company of Mohan Ltd.

Also explain whether a company can enter into a contract with a 'related party' for leasing of the company's property and also for sale of any goods produced by the company . **(4 marks)** ***[CSPP P-1]***

Answer:

(i) According to **Section 2(76) of the Companies Act, 2013**, "related party", with reference to a company, means:

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is:
(A)a holding, subsidiary or an associate company of such company; or
(B)a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed;

Alternative I

Assuming that Kamal is holding 1% of paid up capital of Deep Limited, then Kamal is related party as he is director **[2(76) (i)]**

Alternative II

Assuming that Kamal is holding 1% of paid up share capital of other public company wherein he is also a director of other public company, then such other public company is not a related party. **[2(76)(v)]**

(ii) Fair Limited is a 'related party' within the meaning of the term, as defined **under Section 2(76),** since the company is an associate company of the company in question i.e. Mohan Limited.
Further, in accordance with the provisions of the **Companies Act, 2013,** as contained **under Section 188(1),** no company shall enter into any contract or arrangement with a related with respect to the matters as provided in this sub-section. Accordingly, the company in question cannot enter into any contract for neither leasing of the company's property nor for sale of any goods produced by the

company except by complying with procedure as prescribed in **Section 188 of the Companies Act, 2013** and the relevant rules made thereunder.

Space to write important points for revision

2017 - June [1] (a) Tempest Ltd., an unlisted company, has 500 shareholders, 400 debenture holders and 200 deposit holders. As a Company Secretary of the Company Advise the Board, if the Company is required to form a Stakeholders' Relationship Committee? Discuss the provisions relating to the functioning of such a committee.

(5 marks) ***[CSPP P-1]***

Answer:

Section 178(5) of the Companies Act, 2013 stipulates constitution of a Stakeholders' Relationship Committee as mandatory for every company consisting of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year. **Section 178 (6)** states that the Committee shall consider and resolve the grievances of security holders of the company.

Further, **Section 178 (7)** stipulates that the chairperson of the committee shall attend the general meetings of the company and in his absence, any other member of the Committee authorised by him in this behalf shall attend the general meeting of the company.

In view of the aforesaid provisions of the **Companies Act, 2013**, Tempest Ltd. is required to form a Stakeholders' Relationship Committee and also to comply with the above provisions.

Space to write important points for revision

2017 - June [1] (b) PGA Limited receive a deed of transfer of equity shares complete in all respect, before registering the transfer, it was noticed by the Company that the proposed transferee of the equity shares has deceased, please explain the course of action of PGA Limited in the aforesaid case. What if the PGA Limited is unaware about the such status of transferee? Also explain whether the company is bound to enquire into the capability of the transferee to enter into a contract. **(5 marks)** ***[CSPP P-1]***

Answer:

In accordance with **Section 56 of the Companies Act, 2013,** a company shall register the transfer of shares when a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and transferee has been delivered to the company along with the share certificates.

If transferor sold his shares by executing a transfer deed in favour of transferee and such documents were lodged for transfer but the transferee dies before registration, and a PGA Ltd. has notice of his death, transfer of shares cannot be registered in the name of transferee who has already deceased. With the consent of transferor and legal representative of the transferee, the transfer may be registered in the name of legal heirs of the transferee or his nominee, if any.

In case, the death of transferee is not notified to the PGA Ltd. the company can register the transfer in the name of deceased transferee, in as much as company is not aware of the death of the transferee and the transfer is done *bona fide* by the company.

In ***Killick Nixon Ltd. V. Dhanraj Mills Pvt. Ltd.,*** it was held that the PGA Ltd. is not bound to enquire into the capability of the transferee to enter into a contract. The company has to act on the basis of what is presented in the transfer deed.

Space to write important points for revision

2017 - June [1] (c) Fortune Ltd. had below financial details during the last three financial years:

(₹ In Crores)

Year	Net Worth	Turnover	Net Profit
2016-17	100.00	490.00	5.50
2015-16	95.00	500.00	4.50
2014-15	80.00	380.00	2.00

Discuss the compliance requirements for the Company on Corporate Social Responsibility. Whether Company requires to spend amount on CSR

Activities, and what are the consequences if the Company fails to spend any amount? **(5 marks)** ***[CSPP P-1]***

Answer:

Section 135(1) of the Companies Act, 2013 provides that 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.

Section 135(3) requires that the Committee shall formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in **Schedule VII**. The Committee shall further recommend the amount of expenditure to be incurred on CSR activities and monitor the Policy from time to time.

As per **Section 135(5)** of the Act, the Board shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Accordingly, Fortune Ltd. whose net profits during the current year exceeds rupees five crore is required to comply with the requirements of **Section 135** and form a CSR Committee as explained above and spend an amount of rupees eight lakh (being 2% of the average net profits of rupees four crore). However, the company shall seek to give preference to the local area and areas around it where it operates for spending the aforesaid amount.

However, if Fortune Ltd. fails to spend such amount, the Board shall, in its report made u/s 134(3)(o), specify the reasons for not spending the amount.

Space to write important points for revision

2017 - June [1] (d) Prudent Ltd. an unlisted Company having 4,00,000 equity shares of ₹ 10 each, conducting its general meeting. Ramesh a Proxy of Suresh (Ramesh holds 42,000 equity shares in that Company), demands a Poll to pass a Resolution. Explain the Rights of Ramesh in the capacity of Proxy, whether he will be allowed to demand a Poll? Also explain the role of the Chairman of the meeting in the case. **(5 marks)** ***[CSPP P-1]***

Answer:

Section 109(1)(a) of the Companies Act, 2013 prescribes that before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf, in the case a company having share capital, by the members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up.

Section 109(4) prescribes that a poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.

The Chairman of the meeting shall get the poll process scrutinized and shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and to report thereon to him in the prescribed manner.The Chairman shall declare the result of the voting on poll. [Rule 21 of Companies (Management and Administration) Rules, 2014].

Hence, in the given case, Ramesh, a proxy of Suresh, who holds more than 10% of the equity shares/voting powers, has right to demand the poll and the Chairman of the meeting shall conduct the same accordingly.

Space to write important points for revision

2017 - June [2] (a) Priya is a Whole-Time Director in Surya Limited and Sun Limited, wishing to draw Remuneration from both the Companies. As per the limits prescribed under the Companies Act, 2013, she is entitled to draw a remuneration of ₹ 10,00,000 from Surya Ltd. and ₹ 15,00,000 from Sun

Limited, you being a Company Secretary advise Ms. Priya about her entitlement for the Remuneration in the aforesaid situation.

(4 marks) ***[CSPP P-1]***

(b) Prism Ltd. appointed Mr. Sameer Rajpal as an Independent Director for a term of Three years, upon completion of his first term, he was re-appointed for another term for the same period, now upon completion of the second term, Company again wants to re-appoint him as the Independent Director of the Company, considering the fact that he has not completed the consecutive term of Ten years. Advise the Company on the feasibility of his re-appointment. **(4 marks)** ***[CSPP P-1]***

(c) Decide if the office of Mr. Satish Nirankar, Director of Royal Ltd. shall be vacated in the following circumstances:

(i) he did not attend any board meeting of the Company during the financial year 2016-17, but had promptly sent his leave of absence to Company by e-mail on 31st March, 2017, the last Board Meeting of Financial Year, which was acknowledged by the Company.

(ii) he is convicted by a court of an offence, not involving any moral turpitude and is sentenced for imprisonment for one year but immediately files an appeal in higher Court against the order of the lower Court. **(4 marks)** ***[CSPP P-1]***

Answer:

(a) According to second proviso to **sub-section (1) of Section 197 of the Companies Act, 2013**, the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent of the net profits of the company.

Since the question has no information about profit of these companies, let us assume both companies do not have adequate profit to give salary to its whole time directors.

According to **clause (d) of Part-I of Schedule V of the Companies Act, 2013**, if a person is a managerial person in more than one company, he shall draw remuneration from one or more companies subject to the ceiling provided in **Section V of Part-II** of the said schedule.

The said **Section V of Part-II** provides that subject to the provisions of **Sections I to IV**, a managerial person shall draw remuneration from one

or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

According to Table A, where a company have negative or less than rupees five crore effective capital, it may give yearly remuneration to its whole time directors upto ₹ 60 lakh.

Hence, Ms. Priya is advised that she can draw remuneration from both the companies together upto rupees sixty lakh only.

☞ **Amendment made by Companies (Amendment) Act, 2017:**

Revised First Proviso to Section 197(1)-

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven percent of the net profits of the company, subject to the provisions of Schedule V:"

Revised Second Proviso to Section 197(1)-

"Provided further that, except with the approval of the company in general meeting by a special resolution,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent. of the net profits of the company, if there is a managing or whole- time director or manager;

(B) three per cent. of the net profits in any other case.

Third Proviso to Section 197(1)-

"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall

be obtained by the company before obtaining the approval in the general meeting."

(b) Section 149(10) of the Companies Act, 2013 prescribes that subject to the provisions of **Section 152**, an independent director shall hold office for a term upto five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) states that no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

General Circular No. 14/2014 issued by MCA dated 9th June, 2014 clarifies that though an independent director is to be appointed for a term upto 5 years, there is no bar on appointment for a term of less than 5 years. However, such appointment for less than 5 years is to be counted as one term and at the end of two such consecutive terms, the director should demit his office, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case, at the end of the 2 consecutive terms, he cannot be reappointed again as independent director and the cooling period of 3 years shall start.

In view of the above, Prism Ltd. cannot reappoint Mr. Sameer Rajpal as Independent director of the company at the end of second consecutive term.

(c) Section 167 of the Companies Act, 2013 provides that, among other grounds, the office of a director shall become vacant in case:

(i) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board. **[Section 167(1)(b)]**

(ii) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months and the vacancy is irrespective of the fact that he has filed an appeal against the order of such court. [**Section 167(1)(f)** read with its proviso]

Case (i) :

In present case, he did not attend any of the Board Meetings held during the financial year 2016-17. The office of directorship held by Mr. Satish Nirankar shall become vacant on completion of one year from the last meeting he attended.

The fact that he has given leave of absence and the company has acknowledged it shall have no effect.

Case (ii) :

When he is convicted by a court for more than six months (1 year in this case), his office shall be vacated even though the offence does not involve moral turpitude and even if h e has filed an appeal against the order of the lower court in the higher court.

Space to write important points for revision

2017 - June [2A] (Or) (i) A Ltd. has entered into a contract with B Ltd. by which the former will reserve 25% of their output to be sold to B Ltd. or to a buyer at the direction of B Ltd. Can B Ltd. be called an associate company of A Ltd.?

Also determine, if S Private Ltd. with a paid-up share capital of ₹ 45 lakh and annual turnover of ₹ 175 lakh, is a wholly owned subsidiary of H Ltd., a listed company. Can S Ltd. be called a small company? **(4 marks)** ***[CSPP P-1]***

Answer:

According to 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. "Significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement.

In the instant case, B Ltd. controls more than 20% of the sale and disposal of the output of A Ltd. Thus, A Ltd. is the associate of B Ltd. But A Ltd. neither influences the business decision of B Ltd. in any manner nor does it control 20% of the total share capital of B Ltd. Hence, B Ltd. cannot be called an associate of A Ltd.

Section 2(85) of the Act defines a "small company" as 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 its last profit and loss account does not exceed **two crore** rupees or such higher amount as may be prescribed which shall not be more than **one hundred crore** rupees.

Pursuant to the amendment in the Companies (Specification of Definitions Details) Rules, 2014, a new clause (t) has been inserted in the Rule 2, in sub-rule (1), after clause (s), as under:

"(t) 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 two crores and rupees twenty crores respectively."

However, the definition excludes a holding company or a subsidiary company; a company registered **under section 8**; or a company or body corporate governed by any special Act.

In the instant case, S Private Ltd. satisfies the turnover and paid-up share capital criteria to be a small company, but being a subsidiary of H Ltd., falls under the exclusions to the definition and hence, is not a small company.

Space to write important points for revision

2017 - June [2A] (Or) (ii) Decide whether the following transactions will fall within the ambit of "deposits" as defined under the Companies Act, 2013, quoting relevant provisions of the Act:

(a) Great Ltd. received an application money of ₹ 5 lakh on 1st January, 2017 towards allotment of equity shares, pursuant to an offer made earlier. The Company has neither made the allotment of shares nor refunded the application money so far.

(b) Great Ltd. collected a security deposit of ₹ 5 lakh from Mr. Parteek, an employee whose monthly salary was ₹ 25,000 per month.

(c) Will your answer be different, if the security deposit earned an interest at the rate of 6% per annum?

(d) Great Ltd. collected a security deposit of ₹ 25 lakhs from Mr. Sorabh towards performance of the contract for supply and erection of a machinery. **(4 marks)** ***[CSPP P-1]***

Answer:

The definition of deposits as per Rule 2 (c) of the Companies (Acceptance of Deposits) Rules, 2014, prescribes that 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company.

(a) Deposit does not include any amount received and held pursuant to an offer made in accordance with the provisions of the Act 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. 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. [Rule 2 (c)(vii)]

In the instant case, the application money has been received on 1st January, 2017 and till date neither the allotment nor refund of the application money has been made. Further, 60 days of receipt of application money have already elapsed; hence the amount shall be treated as deposit.

(b) Deposit does not include 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. [Rule 2 (c)(x)]

The security deposit of ₹ 5,00,000 collected from Mr. Parteek Rustagi as an employee, exceeds his annual salary of ₹ 3,00,000 and hence will be treated as deposit.

(c) In case, the security deposit earns interest at 6% per annum, that again violates the requirement of being non-interest bearing security deposit and hence it shall be treated as deposit. [Rule 2 (c)(x)]

(d) Deposit does not include any amount received in the course of, or for the purposes of, the business of the company as security deposit for the performance of the contract for supply of goods or provision of services [Rule 2 (c)(xii)(c)].
In the instant case, the security deposit of ₹ 25 lakh received from Mr. Sorabh Jain against performance of the contract for supply and erection of machinery shall not be treated as deposit.

Space to write important points for revision

2017 - June [2A] (Or) (iii) Favourite Ltd., an unlisted Company, has the following figures at the end of the last financial year:

Paid-up share capital	:	₹ 110.00 Crore
Turnover	:	₹ 600.00 Crore
Borrowings by way of loans, debentures and deposits	:	₹ 60.00 Crore

Being a Company Secretary, advise the Company on the composition of its Board of Directors as required under the Companies Act, 2013.

(4 marks) ***[CSPP P-1]***

Answer:

Sec. 149 of the Companies Act, 2013 read with relevant rules provides for the following:

(a) Every public company shall have a Board of Directors consisting of minimum 3 Directors and maximum 15 directors. However, by passing special resolution, the company can appoint more than 15 directors.

(b) Every public company having a paid-up share capital of ₹ 100 Crore or a turnover of ₹ 300 Crore shall appoint at least one woman director. Favourite Ltd. satisfies the paid-up share capital and turnover criteria and hence should appoint at least one woman director in the Board.

[Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014]

(c) Every public company with a paid-up share capital of ₹ 10 Crore or more, or turnover of ₹ 100 Crore or more or outstanding loans, debentures and deposits exceeding ₹ 50 Crore should appoint at least two directors as independent directors. Favourite Ltd. satisfies all the criteria and hence is required to appoint minimum two independent directors in the Board. [Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014]

In the instant case, the Company is advised that it should constitute a Board of minimum 4 directors out of which 2 (two) directors shall be independent directors and out of such 2 (two) independent directors, one shall be a woman director.

Space to write important points for revision

2017 - June [3] (a) Advise whether the auditor appointment by a private limited company with paid-up share capital of ₹ 50.00 Crore in the following cases are valid for the financial year 2017-18:

(i) Amarjeet, (an Individual Auditor) who has been the auditor since financial year 2011-12.

(ii) Firm VAP & Co., who completes 10 years continuously, at the end of financial year 2016-17. Vijay is a partner in VAP & Co.

(iii) Firm Ajay & Co., in which Vijay is also a partner in addition to being a partner of VAP & Co. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 139(2) read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides for rotation of auditors. The said provisions are applicable to a private limited company having paid-up share capital of fifty Crore or more.

The aforesaid provisions prescribe that an individual auditor who has completed the term of five years cannot be reappointed as an auditor in the same company for five years from the completion of his term, likewise an audit firm which has completed the 2 terms of five years each cannot be

eligible for re-appointment as auditor in the same Company for five years from the completion of such terms. **[Section 139(2)(i) & (ii)]**
Also, if two or more audit firms have common partner, and one of these firms has completed two terms of five consecutive years, none of such audit firms shall be eligible for reappointment as auditor in the same company for 5 years from completion of such term.

In view of the given case:

(i) Amarjeet, an Individual cannot be appointed as auditor because he has completed the term of 5 consecutive years.
(ii) YAP & Co. cannot be appointed as the firm has completed the term of 10 consecutive years.
(iii) Ajay & Co. also cannot be appointed as it has a common partner with VAP & Co. which is not eligible of reappointment.

Companies (Audit and Auditors) Second Amendment Rules, 2017 dated 22.06.2017
Rule 5 has been amended w.r.t. applicability of mandatory appointment of auditor in private companies.
Revised Rule is as under:
For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:

(a) all unlisted public companies having paid up share capital of rupees ten crore or more;
(b) all private limited companies having paid up share capital of rupees fifty crore or more;
(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

Space to write important points for revision

2017 - June [3] (a) A meeting of members of Joka Agricultural Equipments Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 500000 shares. 70 members holding 400000 shares in the aggregate voted for the scheme. 120 members holding 90000 shares in aggregate voted against the scheme. 10 members holding 10000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority? **(6 marks)** ***[CMA PAPER - 13]***

Answer:

Compromise or Arrangement:

According to **Section 230(6) of the Companies Act, 2013,** the scheme of compromise and arrangement must be approved by a resolution passed with a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 200 members attended the meeting, but only 190 members voted at the meeting. As 70 members voted in favour of the scheme the requirement relating to majority in number (i.e. 95) is not satisfied.

190 members who participated in the meeting held 4,90,000 shares, three-fourth of which works out to 3,67,500 while 70 members who voted for the scheme held 4,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, **in the instant case,** the scheme of compromise and arrangement of Joka Agricultural Equipments Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against.

Space to write important points for revision

2017 - June [3] (b) Excel Ltd., an unlisted company, has a paid-up share capital of ₹ 30 Crore turnover of ₹ 190 Crore and borrowings of ₹ 25 Crore and outstanding deposits of ₹ 30 Crore. Decide if the Company needs to comply with internal audit requirements under the Act. If so, can they appoint Siddh, who is the Practising Company Secretary, as their internal auditor?

(4 marks) ***[CSPP P-1]***

Answer:

Section 138 of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014 stipulates that the following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:

(i) Every listed company;

(ii) Every unlisted public company having paid-up share capital of ₹ 50 Crore or more during the preceding financial year, or turnover of ₹ 200 Crore or more during the preceding financial year, or outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 Crore or more at any point of time during the preceding financial year or outstanding deposits of ₹ 25 Crore or more at any point of time during the preceding financial year; and

(iii) Every private company having turnover of ₹ 200 Crore or more during the preceding financial year or outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 Crore or more at any point of time during the preceding financial year.

The internal auditor so appointed, may or may not be an employee of the company. The internal auditor shall be either a Chartered Accountant or a Cost Accountant or any other professional as may be decided by the Board. In the instant case, Excel Ltd. being an unlisted company, exceeds the prescribed limit of outstanding deposit, i.e., ₹ 25 Crore as applicable for such class of companies and hence is required to appoint an internal auditor. The provision allows appointment of any other professional other than Chartered Accountant or Cost Accountant as internal auditor and hence, Excel Ltd. can appoint Siddh who is the Company Secretary in practice, as internal auditor of the Company with the due approval of Board.

Space to write important points for revision

2017 - June [4] (a) Encode Pvt. Ltd. is having two shareholders namely Mr. Vishal and Mr. Joytan holding 9,00,000 and 5,50,000 equity shares, of ₹ 10 each, respectively. The Company's Paid-up Share Capital as on the date is ₹ 1,45,00,000 and Authorised Share Capital is ₹ 2,00,00,000. Company wishes to issue further equity shares for ₹ 7,50,000, i.e., 75,000 equity shares of ₹ 10 each at par, by way of Rights issue, to meet the working capital requirements and expansion plan of the Company, you being a Company Secretary of the Company is required to draft the Board Resolutions *inter-alia* approving the letter of offer towards aforesaid offer of the Rights Issue, assuming that the shareholders may renounce their rights of subscription and the proposed shares shall rank *pari-passu* with the existing Equity shares of the Company. **(8 marks)** ***[CSPP P-1]***

Answer:

Meeting : Board Meeting
Date : 2nd June, 2017
Resolution : Board Resolution

The Board considered the matter and after due deliberations passed the following resolution(s):

"RESOLVED THAT pursuant to the provisions of **Section 62(1)(a)** and other applicable provisions, if any, of the **Companies Act, 2013** and the Articles of Association of the Company, the consent of the Board be and is hereby accorded to offer and issue 75,000 (seventy-five thousand) equity shares of the company of the face value of ₹ 10/- (Rupees Ten) each at par (hereinafter referred to as 'new shares') to the existing equity shareholders on Rights Issue basis in the following manner:

Sl. No.	Shareholder's Name	No. of Shares held	Value (₹)	% of Share-holding	Proposed under Right offer
1.	Vishal Rastogi	9,00,000	90,00,000	62.07	46,552
2.	Mr. Joytan Verma	5,50,000	55,00,000	37.93	28,448
Total		14,50,000	1,45,00,000	100.00	75,000

i.e., in proportion of their existing shareholding in the paid-up share capital of the company as on date, on the terms and conditions as under:

The rights issue shall remain open from 6th June, 2017 to 5th July, 2017 (both days inclusive) (hereinafter referred to as "offer period"):

(i) The full amount at ₹ 10 per equity shares along with the duly filled and signed application form for such equity shares shall be submitted during the offer period.

(ii) The offer aforesaid, if not accepted within the offer period, will be deemed to have been declined; and

(iii) The offer aforesaid shall include a right exercisable by the persons to renounce the equity shares being offered, in favour of any other person(s) provided such renunciation is made during the offer period and the renounce shall submit application form with the application money during the offer period.

RESOLVED FURTHER THAT the draft letter of offer along with application form, as placed before the Board and initialed by the Chairman for the purpose of identification, be and are hereby approved.

RESOLVED FURTHER THAT the new equity shares, so issued, shall upon allotment have the same rights of voting as the existing equity shares and be treated for all other purposes ***pari passu*** with the existing equity shares of the Company.

RESOLVED FURTHER THAT after the expiry of the aforesaid offer period or on receipt of earlier intimation from the person(s) to whom such notice was given that he declines to accept the new shares offered, or if the offer is not accepted within stipulated time, it shall be deemed declined and the Board of Directors of the company be authorized to dispose of unsubscribed part of the new shares in such manner as they think most beneficial to the company subject to the terms of any resolution, agreement or regulation of articles of association of the company, if any.

RESOLVED FURTHER THAT the Directors of the company be and are hereby severally authorized to sign and issue the Letter of offer, Application for allotment, Application for Renunciation and such other papers/documents as may be necessary in this regard to all eligible equity shareholder of the Company".

Space to write important points for revision

2017 - June [5] (a) Forecore Ltd. is a closely held company with 25 shareholders and proposes to make a public offer of convertible securities. The existing shareholders (Promoter) have their holdings in physical form. The company is wishing to issue, aforesaid convertible securities to the public, in physical form. Advise the feasibility. **(4 marks)** ***[CSPP P-1]***

Answer:

For issue of convertible securities to the public shares held in physical format need to be first converted to demat form.

The ICDR regulations provide for regulations regarding issue of convertible securities in physical form.

Space to write important points for revision

2017 - June [5] (b) Explain the provisions to determine in what circumstances an Individual will be considered as a promoter of the Company, if Kundan has been identified as a promoter in the recent annual return of the Company, please comment whether Kundan will be considered as a promoter of that Company? In the event of a mis-statement in the prospectus of the company, what will be the civil liability of Kundan?

(4 marks) ***[CSPP P-1]***

Answer:

As per **Section 2(69) of the Companies Act, 2013**, 'promoter' means a person:

(i) who has been named as such in a prospectus or is identified by the company in the annual return; or

(ii) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

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

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

Since, Kundan has been identified as a promoter in the recent annual return of the company which falls within the ambit of the definition of promoter, hence he is promoter of that Company.

Section 35(1) of the Act provides that where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who is a promoter of the company shall without prejudice to any punishment to which any person may be liable under **Section 36** to pay compensation to every person who has sustained such loss or damage.

Here in the given case, if Kundan makes such misleading information or statement in the prospectus, he will be held liable for the loss or damage occurred as a consequence of such misleading information and be liable to pay compensation to every person who has sustained such loss or damage. However, he can escape his liability if he proves that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Space to write important points for revision

2017 - June [5] (c) Lal holds 1,00,000 preference shares in Luxury Ltd. (an unlisted company), wants to understand his voting rights in the Company. Advise. **(4 marks)** ***[CSPP P-1]***

Answer:

As per Rule 9(2) of the Companies (Share Capital and Debentures) Rules, 2014, the voting rights of the preference shareholders are governed by the resolution passed for issuance of such preference shares in the general meeting of the company.

Section 47(2) of the Companies Act, 2013 provides that:

Every member of a company limited by shares and holding any preference shares capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights

attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Space to write important points for revision

2017 - June [5] (d) Dynamic Ltd. (paid-up share capital ₹ 25 Crore) proposes to enter into a contract with Sunil for the procurement of raw materials for an amount of ₹ 5 Crore during the financial year. Sunil is the step brother (father's second wife's son) of Anil, who is a director of Dynamic Ltd. Discuss the compliance requirements in respect of the above procurement contract.

(4 marks) ***[CSPP P-1]***

Answer:

Section 188(1)(a) prescribes that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to the sale, purchase or supply or any goods or materials.

Rule 15(1) of the Companies (Meeting of Board and its Powers) Rules, 2014 prescribes that the agenda of the Board Meeting at which the resolution is proposed to be moved shall disclose:

(a) the name of the related party and nature of relationship;
(b) the nature, duration of the contract and particulars of the contract or arrangement;
(c) the material terms of the contract or arrangement including the value, if any;
(d) any advance paid or received for the contract or arrangement, if any;

(e) the manner of determining the pricing and other commercial terms, both included as part of the contract and not considered as part of the contract;
(f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rational for not considering those factors; and
(g) any other information relevant or important for the Board to take a decision on the proposed transaction.

Rule 15(2) provides that where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating such contract or arrangement.

Section 2(76) defines a related party to mean a director or his relative. **Section 2(77)** read with **Rule 4** of the Companies (Specification of Definitions Details) **Rules, 2014** provides that the term relative includes step-brother.

In view of the above provisions, the transaction is a related party transaction as Anil's step-brother is a relative.

Space to write important points for revision

2017 - June [6] (a) SRM Limited (a listed company), a wholly owned subsidiary of Spice Limited (an another listed company) proposes to acquire 10,000 equity shares of Spice Limited from the secondary market (in demat form). Advise SRM Limited on the feasibility of the proposal.

(4 marks) ***[CSPP P-1]***

Answer:

Section 19 of the Companies Act, 2013 provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. First proviso to the said

section states that, the above prohibition shall not apply to the following cases:

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
(b) where the subsidiary company holds such shares as a trustee; or
(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Provided further that the subsidiary company referred to in the first proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

In the light of the above provisions, SRM Ltd. cannot hold equity shares in Spice Ltd. and further, Spice Ltd. is advised to prohibit from making any allotment or transfer in favour of SRM Ltd. If such an allotment or transfer is done, it will be void.

Space to write important points for revision

2017 - June [6] (d) Star Ltd. was incorporated on 1st January, 2016. Further, Star Ltd. has floated its subsidiary company incorporated in Germany for which the financial year ends with June every year. In light to the above, please determine:

(i) The first financial year of Star Ltd. for which financial statement will be reported.
(ii) Does Star Ltd. have an option to align its financial year with that of its German subsidiary in respect to the consolidation of its accounts outside India? **(4 marks)** ***[CSPP P-1]***

Answer:

Section 2(41) of the Companies Act, 2013 provides that '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.

It also provides that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company

incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.

In the light of the aforesaid provisions —

(i) The first financial year of Star Limited will be from 1st January, 2016 and shall end on 31st day of March, 2017.

(ii) Since, Star Ltd. has a subsidiary incorporated in Germany who has to follow June as the financial year end, Star Ltd. being the holding company, can make an application to the Tribunal. If the Tribunal is satisfied with the conditions, it will allow Star Ltd. to adopt the financial year ending June, in order to align with its subsidiary for the purpose of consolidation of its accounts outside India.

Space to write important points for revision

2017 - Dec [1] (a) Rajesh & Ramesh Co., Chartered Accountants, are the statutory auditor of FDE Textiles Pvt. Ltd.

DEF Products Ltd., the holding company of FDE Textiles Pvt. Ltd., is considering to allot assignment of designing of financial information system to Rajesh & Ramesh Co. Comment and advise the Board of Directors of DEF Products. Ltd. on the above. **(5 marks)** ***[CSPP P-1]***

Answer:

Section 144 of the Companies Act, 2013 provides that 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 which shall not include specified services, whether those services are rendered directly or indirectly to the company or its holding company or subsidiary company.

Specified services include design and implementation of any financial information system.

Thus, applying the provision into the given case, Rajesh & Ramesh Co., Chartered Accountants, shall not accept the said assignment, if proposed to be given by DEF Products Ltd. holding company of FDE Textiles Pvt. Ltd.

Space to write important points for revision

2017 - Dec [1] (b) Critically evaluate the following statement:
"The ultimate objective of an IPO is to maximize the wealth of the promoters rather than raising funds." **(5 marks)** ***[CSPP P-1]***

(c) Board of Directors of Supershine Detergents Ltd., a listed company having accumulated free reserves of rupees five hundred and fifty crores, authorized share capital of rupees seventy five crores and paid up share capital of rupees fifty crores is considering a proposal to capitalize part of the reserves by issue of Bonus shares in the ratio of 1:1 to its shareholders. You, being the Secretary of the company, Management seeks your advice on the matter.

Prepare action plan to be submitted to the Board at the next board meeting and for successful implementation of the proposal.

(5 marks) ***[CSPP P-1]***

Answer:

(b) The primary objective for an Initial Public Offer (IPO) is to raise funds for the company. The equity shares of the company get listed on Stock exchange after the IPO. The promoters are required to contribute the initial capital and such shares are issued to the promoters at par. The promoters hold the majority of shares of the company even after the IPO. Over the period of time, the floating stocks of the shares from retail and small shareholders move to large and institutional shareholders. As a result of decrease in the floating stock of the shares in the secondary market of the company, the market prices of the equity shares appreciate and move up.

The largest beneficiaries after the IPO are the promoters of the company as their initial investment gets multiplied several times. Hence the end result is that promoter's wealth gets maximized.

(c) Facts given in the case:

Authorised share capital of the company ₹ 75 crores
Paid-up share capital (Equity shares): ₹ 50 crores
Free Reserves of the company : ₹ 550 crores
Proposal for issue of Bonus shares : ₹ 50 crores
Authorised share capital to be increased to : ₹ 100 crores
Balance Free Reserves of the company : ₹ 500 crores.

From the above stated facts, it is clear that the proposal of the management to issue Bonus Shares in the ratio of 1:1 is perfectly in order, assuming that it is authorized by articles of association of the company and it is authorized by the General Meeting on the recommendation by the Board. Further, there is no default in payment of interest or repayment of deposits or dues to banks/financial institutions or statutory dues of the employees of the Company such as contribution fund to provident fund, gratuity and bonus **[Section 63 (2)]**. As such, the Company can proceed to declare 1:1 Bonus Shares to the existing shareholders of the company after complying with the following:

1. Authorised share capital of the Company to be increased to ₹ 100 crores by passing an ordinary resolution in a general meeting convened by the Board;
2. Capital clause of Memorandum of association and if necessary the relevant portion of the Articles of Association should be amended;
3. If the Article of Association of the Company do not contain a provision for capitalisation of profits by issue of Bonus Shares, Article of Association should also be amended to incorporate such a provision therein;
4. Issue notice alongwith Agendas and notes to it for convening the Board Meeting at least seven days before the date of Board meeting to all the directors entitled to attend the meeting.
5. Send intimation to the stock exchange at least two working days in advance of the date of Board Meeting excluding the date of intimation and the date of the meeting.
6. Hold the Board Meeting to convene the Extra-ordinary general meeting for passing the following resolutions (as required):

(a) To recommend the bonus issue;
(b) To approve the resolution to be passed at a general meeting;
(i) To authorize the Bonus issue
(ii) To approve requisite resolution for increase of the capital and consequential alteration of the Memorandum of Association/ Articles of Association(if necessary)
(iii) To enable the Articles to authorize the issue, if necessary.

7. Filing of following requisite forms along with fee as specified in Companies (Registration of Offices and Fees), Rules 2014 within 30 days of passing of the resolutions in the extra-ordinary general meeting after ensuring that all the shares are fully paid-up and the bonus issue is not in lieu of the payment of dividend:
   (a) Form MGT-14 for filing of the special resolution (s) along with the altered article of association of the company.
   (b) Return of allotment in Form PAS-3.
8. After the allotment of the shares the details of it to be provided to the depository immediately. Also, all the share certificates shall be delivered to the shareholders within two months from the date of such allotment.

Space to write important points for revision

2017 - Dec [1] (d) Goodwill Electronics OPC incorporated on 1st July, 2015 as a One Person Company with an authorized and paid up share capital of rupees forty lakhs recorded turnover of rupees forty five lakhs in the first nine months ended 31-3-2016 and ₹ 135 lakhs during the next nine months ended 31-12-2016. Having seen the fast growing potential of his business in the IT-ES sector, Mr. Victor, promoter and sole director of the Company desires to make further investment of ₹ 50 lakhs from his friends. He seeks your advice on the following:

(i) Whether Mr. Victor can issue shares to his friends without changing the constitution of the Company; **(1 mark)** ***[CSPP P - 1]***

(ii) If his friends desire to invest in the share capital of the Company to help Mr. Victor expand the business, how he can make further issue of shares to his friends; **(3 marks)** ***[CSPP P - 1]***

(iii) Whether Mr. Victor can include two or three of his friends as directors of the Company to support him in the management of the Company.

(1 mark) ***[CSPP P - 1]***

Answer:

(i) In the given case, Mr. Victor cannot issue shares to his friends without changing the constitution of the Company. Goodwill Electronics is an OPC and Mr. Victor is the sole member and director of the said OPC. As per provisions of Companies Act, 2013 OPC can't have more than one shareholder. To accept share capital from his friends he has to convert the OPC either into a Private company or Public Company.

As per Rule 3(7) of Companies (Incorporation) Rules, 2014, an OPC cannot convert voluntarily into any kind of company unless two years are expired from the date of incorporation.

However, in case such One Person Company, exceeds its paid up share capital beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, then in such case it have to get converted to other forms of Company at any time i.e. before the expiry of the two years also.

(ii) Once the OPC gets converted to other form of Company in compliance with Rule 3 (7) of the Companies (Incorporation) Rules, 2014 then Mr. Victor can accept the investment in the nature of share capital from his friends by making further issue of shares through private placement by complying with the provisions of Section 42 read with relevant rules made thereunder.

(iii) Mr. Victor can include two or three of his friends as directors of the Company so as to support him in the management of the Company subject to the maximum number of directors i.e. 15 as stated in Section 149 (1) (b) of the Companies Act or such other larger no. of directors after passing a special resolution in this regard.

Space to write important points for revision

2017 - Dec [2A] (Or) (ii) PQR Limited, by amending its Articles of Association, inserts the following clauses:

(a) Members of the company shall be bound by the new clause even though they voted against it.
(b) A resolution has been passed to make the share capital of the company fixed.
(c) A resolution has been passed in the general meeting to give 30 days notice to members for holding general meeting.

Ascertain if the above clauses of the articles are valid as per Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

Answer

The provisions of Section 14 of the Companies Act, 2013, lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days in e-form MGT-14.

The answer to the sub-questions stated are as follows:

(a) The stated clause is valid, as all the members of a company become bound by any valid alteration made to the Articles of Association whether they voted for or against it ***[HariChandana Yoga Deva v. Hindustan Co-operative Insurance Society Ltd., AIR 1925 Cal. 690]*** Section 14 (3) provides that (3) any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.
(b) The stated clause is not valid, as any alteration made to the Articles of Association which has the effect of limiting the company's share capital to a fixed amount would have no effect being contrary to the provisions of the Act. ***[Muheer Hemant Mafatlal v. Mafatlal Industries Ltd., (1987) 89 Bom LR 86 (Bom)]***.
(c) The stated clause is valid, as a company is required to give 21 days' notice for holding general meeting as per the provisions of the Companies Act, 2013. Therefore, in the given case, a company may provide in its articles to give 30 days' notice which is not in contravention to the provisions of the Law and the stringent provisions can be made in the Articles of Association of the company so long as they are not contrary to the provisions of the Act.

Space to write important points for revision

2017 - Dec [2A] (Or) (iii) Should there be any exclusive meeting of independent directors? Referring to the provisions of the Companies Act, 2013, examine whether in the following cases, companies are required to appoint Independent Director:

(a) Support Limited has paid-up share capital of ₹ 5 crore. Support Limited is a non-banking non-financial company.

(b) Energies Limited has turnover of ₹ 200 crore.

Both these companies are not listed at any of the Stock Exchanges.

(4 marks) ***[CSPP P-1]***

Answer:

In terms of provisions of **Schedule IV to the Companies Act, 2013** and Regulation 25 (3) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the independent directors of the company shall hold at least one meeting without the attendance of non-independent directors and members of management and all the independent directors shall strive to be present at such meeting.

In terms of provisions of Section 149 (4) and Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014, every listed public company shall have at least one-third of the total number of directors as independent directors.

Also the following class or classes of companies shall have at least two directors as independent directors:

(i) the Public Companies having paid up share capital of ₹ 10 crores or more; or

(ii) the Public Companies having turnover of ₹ 100 crores or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crores

In terms of the aforesaid provisions,

(a) In case of Support Limited, since the company is not a listed entity and its paid up capital is less than ₹ 10 crores the question of appointment of independent directors doesn't arise.

(b) In the case of Energies Limited, even if it is not a listed entity but since Energies Limited is a public company, having the turnover of ₹ 200 Crores which attracts the compliance of the provision. Hence, the Energies Ltd. shall appoint at least two directors as independent directors since the turnover of the Company is ₹ 200 crores falls under the category of qualifying limits as stated above.

Space to write important points for revision

2017 - Dec [3] (a) The following information are available for Sidhana Ltd.:

	(₹ in Crores)
Paid up Equity Share Capital (8 crore equity shares of ₹ 10 each)	80
General Reserve	60
Share Premium	40
Secured Loans	65

(Including cash credit limit of ₹ 50 Crores from Unity Bank)

(i) Whether the company is eligible to accept deposit from its members and public? Calculate the quantum of deposit that can be accepted from its members and public and Deposit Repayment Reserve.

(ii) Can Sidhana Ltd. borrow by way of a term loan of ₹ 200 Crores from MM Bank? **(4 marks)** ***[CSPP P-1]***

Answer:

As per Section 76 of the Companies Act, 2013 certain public companies can accept the deposits from public i.e. from the persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may prescribe, in consultation with the Reserve Bank of India.

However, such a company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public

which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

So also, every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014 provides for the Maintenance of liquid assets and creation of deposit repayment reserve account as follow –

Every company referred to in sub-section (2) of Section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below 20% of the amount of deposits maturing, until the end of the current financial year and the next financial year.

Rule 3(4) (a) of the Companies (Acceptance of Deposits) Rules, 2014 as amended by the Companies (Acceptance of Deposits) Second Amendment Rules, 2015 provides that –

No eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the Paid-up share capital, free reserves and securities premium account of the company.

Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014 as amended by the Companies (Acceptance of Deposits) Second Amendment Rules, 2015 provides that –

No eligible company shall accept or renew any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds twenty five percent of aggregate of the Paid-up share capital, free reserves and securities premium account of the company.

(i) The company "Sidhana Ltd." is eligible to accept deposit from its members and public since it is a public company having its net worth of ₹ 180 Crores which is more than the qualifying limit as prescribed in Section 76 of the Companies Act, 2013.

However, the company can accept the deposit from its members upto the limit of ₹ 18 Crores assuming that no outstanding deposits from the members are in existence as on the date of acceptance of such deposits. So also, the company can accept the deposit from the public upto the limit of ₹ 45 Crores assuming that no outstanding deposits from the public are in existence as on the date of acceptance of such deposits.

The company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the sub-section (2) of Section 73 of the Companies Act, 2013 with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits. Also, ensure that the amount remaining deposited shall not at any time fall below fifteen per cent of the amount of deposits maturing, until the end of the current financial year and the next financial year.

(ii) Sidhana Ltd. can borrow by way of term loan upto ₹ 125 Crores from MM Bank by passing a board resolution. However, it can borrow ₹ 200 Crores by way of a term loan from MM Bank subject to the passing of special resolution by the members of the company as required under Section 180 (1)(c) of the Companies Act, 2013.

Space to write important points for revision

2017 - Dec [3] (b) Prashant is the GM (Secretarial) of Magnificent Housing Finance Ltd. Its paid up capital is ₹ 51 lakhs. The company took ₹ 15 lakhs from him under an employment contract. Prashant is paid a salary of ₹ 2 lakhs per month. The amount of ₹ 15 lakhs taken from him is interest bearing. Advise if there is any non-compliance of provisions of Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

Answer:

In terms of proviso to sub-section (1) to **Section 73 of the Companies Act, 2013**, the prohibition on acceptance of deposits from public is not applicable to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. Further, the Companies (Acceptance of Deposits) Rules, 2014 are also not applicable on a banking company, a non-banking financial company, a housing finance company registered with the National Housing Bank, and a company specified by the Central Govt. under the proviso to sub-section (1) of **Section 73 of the Companies Act, 2013**.

In the given case, Mr. Prashant is the General Manager (Secretarial) of a Housing Finance company, which is exempt as per the aforesaid provisions. Hence, there is no non-compliance of the provisions of Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014.

Space to write important points for revision

2017 - Dec [3] (d) PQR Textiles Ltd., a listed company covered under the relevant Rules and Section 148 of the Companies Act, 2013 for appointment of Cost Auditors, has appointed CMA Suresh as cost auditor of the company for the financial year 2016-17. Management of the company desires to appoint the same Cost Auditor for the next financial year also. Explain the procedure for reappointment of the same Cost Auditor for the next financial year. **(4 marks)** ***[CSPP P-1]***

Answer:

Procedure for the re-appointment of the Cost Auditor of PQR Textiles Ltd., a listed company covered under the relevant rule i.e. Rule 3 and 4 of the Companies (Cost Records and Audit) Rules, 2014 and **Section 148 of the Companies Act, 2013 is as under:**

1. The company shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor.

2. The audit committee, if constituted by the company shall ensure that the cost auditor is free from any dis-qualifications.
3. The audit committee shall obtain a certificate from the cost auditor certifying his independence.
4. Every such company shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in Form CRA-2, along with the fee as specified in Companies (Registration Offices and Fees) Rules, 2014.
5. On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within 30 days from the date of filing of such application.
6. If within thirty days from the date of filing of such application, the Central Government directs the company to re-submit the said application with additional information the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
7. After the expiry of thirty days, the company shall issue formal letter of appointment to the cost auditor.
8. The audit committee, if constituted by the company recommends to the Board a suitable remuneration to be paid to the cost auditor. In the case of those companies which are not required to constitute an audit committee, the Board shall consider and approve the remuneration of the Cost Auditor which shall be ratified by shareholders subsequently.

9. Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.

Space to write important points for revision

2017 - Dec [4] (b) (i) Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted. Elaborate.

(6 marks) ***[CMA PAPER - 13]***

Answer:

According to the Companies Act, 2013, the Central Government under Section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

(a) on the receipt of a report of the Registrar or Inspector under Section 208;
(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;
(c) in public interest. According to Section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

The shareholders' application will not be accepted as under Section 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

Space to write important points for revision

2017 - Dec [5] (a) Smriti Technologies Ltd. was incorporated before 9 years. It is being observed that the net worth is eroded by its accumulated losses as at 31-03-2017. However, in relation to general meeting of the company, examine the powers of the Chairperson to adjourn the meeting *suo moto*.

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

(i) Whether a fresh notice is required to be given for adjourned meeting?

(ii) Whether a new business not stated in the original agenda can be transacted at the adjourned meeting?

(iii) What consequences follow in case the meeting is a requisitioned meeting and the required quorum is not present at the scheduled date and time? **(4 marks)** ***[CSPP P-1]***

Answer:

A duly convened meeting should not be adjourned arbitrarily by the chairperson. The chairperson may adjourn a meeting with the consent of the members and should adjourn a meeting if so decided by the members. The chairperson, therefore cannot suo motu adjourn meeting.

If a meeting is adjourned sine die or for a period of 30 days or more, a notice of the adjourned meeting should be given in accordance with the provisions of the Act. If a meeting is adjourned for a period of less than 30 days, the company shall give not less than 3 days' notice specifying day, date, time and venue of the meeting, to the members either individually or by publishing an advertisement in the newspaper which is in circulation at the place where the registered office of the company is situated. (Proviso to **Section 103 (2) of the Companies Act, 2013)**.

If a meeting, other than a requisitioned meeting stands adjourned for want of Quorum, the adjourned meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be decided by the Board.

(i) Fresh notice, therefore, for the adjourned meeting is not required as the meeting is in continuance of the original scheduled meeting, in accordance with the above provisions. Such a notice is required only when the meeting is adjourned sine die or for 30 days or more for want of quorum or any other reason like the additional time required for the matters to be transacted at such meeting assuming that the Smriti Technologies Ltd. is an unlisted public company.

(ii) As the adjourned meeting is the continuance of the original meeting for want of unfinished agenda or quorum, no new business can be

transacted. For new business proper notice should be given for another meeting.

(iii) It within half an hour from the time appointed for holding a requisitioned meeting, a quorum is not present, the meeting stands cancelled/dissolved. **(Section 103 (2) (b) of the Companies Act, 2013)**.

The fact of erosion of net worth by its accumulated losses is of no relevance here.

Space to write important points for revision

2017 - Dec [5] (c) Tiny Products Ltd. is quoted in Mumbai Stock Exchange. Before 3 years, its name was changed from Small Products Ltd. It proposes to issue 10 lakh sweat equity shares of the company to a non-executive director for providing technical know how. The CFO of the company has approached you, being the Company Secretary, how to determine the issue price. Advise CFO. **(4 marks)**

Answer

The Company can issue sweat equity shares to a non-executive director for providing technical know how provided that the paid up share capital after issue of 10 lakh sweat equity shares does not exceed the authorized capital of the company. The price of the sweat equity shares to be issued shall not be less than the higher of the following:

(i) The average of the weekly high and low of the closing prices of the equity shares of the company during the last six months preceding the relevant date. Or

(ii) The average of the weekly high and low of the closing prices of the related equity shares of the company during the two weeks preceding the relevant date.

The relevant date for the purpose of issue of sweat equity shares means the date which is 30 days prior to the date on which the general meeting is convened to consider issue of sweat equity shares.

The company shall not issue sweat equity shares more than 15% of the paid up share capital of the company in a year. However, such percentage is subject to the maximum limit of the issue value of ₹ 5 Crores.

So also, the issuance of the sweat equity shares in the Company shall not exceed twenty five percent, of the paid-up capital of the company at any time.

The CFO of Tiny products Ltd. is to be informed accordingly.

The fact of change of name of the company is of no relevance here since it does not impact the pricing of the shares to be issued. So also, the said corporate action was taken before the 3 years which is not an immediate event which can impact or affect the valuation of shares at present.

Space to write important points for revision

2017 - Dec [6] (b) Interior Pvt. Ltd. is a manufacturing company having turnover of ₹ 210 crore but having maximum outstanding loan from public financial institution of ₹ 90 crore only during the preceding financial year. You are required to state whether the company is liable for internal audit as per the provisions of the Companies Act, 2013. **(5 marks)** ***[CMA PAPER - 13]***

Answer:

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate [As amended *vide* notification no. G.S.R. 742(E) dated 27th July, 2016], namely:

(a) every listed company.

(b) every unlisted public company having:
   (1) paid up share capital of ₹ 50 crore or more during the preceding financial year, or
   (2) turnover of ₹ 200 crore or more during the preceding financial year, or
   (3) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year, or
   (4) outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year, and

(c) every private company having:
   (1) turnover of ₹ 200 crore or more during the preceding financial year, or

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

Hence, since the turnover of the company exceeds ₹ 200 crore, it is liable for internal audit.

Space to write important points for revision

2017 - Dec [6] (c) Vinodh Ltd. paid the last installment of the term loan with interest on 25th January, 2017 to its bank and requested the bank to issue 'No Dues Certificate' confirming total repayment of the term loan of ₹ 450 lakhs availed from the bank in 2010. However, the bank had to verify the accounts of the company before issuing the letter confirming repayment of all the dues to the bank. In that process the company could get the bank's letter only on 3-3-2017. Bank's letter mentioning 25th January, 2017 as the date on which the company cleared all the dues of the bank and that the charge created to secure the term loan could be treated as satisfied on that date. Since more than 30 days has lapsed after repayment of the term loan, company is required to apply to the Central Government to condone the delay in filing satisfaction of the charge. You, being the practising Secretary, the company seeks your advice for getting the Central Government's order condoning the delay.

Advise examining the provisions of Companies Act, 2013 and Rules.

(4 marks) ***[CSPP P-1]***

Answer:

Vinodh Limited, Completed repayment of the entire term loan of ₹ 450 lakhs to its banks and cleared all the dues to the bank on 25-01-2017. However, the bank issued letter on 03-03-2017 confirming repayment of the loan mentioning 25-01-2017 as the date on which charge created to secure the loan could be treated as satisfied.

Since satisfaction of the charge has to be filed within 30 days of repayment of the loan and clearing of the charge, there is delay in filing satisfaction of charge on account of which the company has to get the delay condoned by the Central Government (power of Central Government delegated to regional director).

The Company shall file e-form CHG-4 with additional fees of delay and on the challan of e-form it shall be mentioned that company has made delay in filing the form. Make an application for condonation of delay to regional director. The form CHG-4 shall be approval only after condonation of delay.

The company should make an application in Form CHG-8 to regional director explaining the cause for delay in getting the bank's letter confirming repayment of the bank's dues in respect of the charge, paying the applicable fees.

Central Government/regional director on being satisfied that delay is due to bank's procedure to verify the company's loan account details before issuing the No Dues Certificate and not due to the company's fault, the regional director may pass an order extending the time for filing satisfaction of charge.

The order passed by the Central Government under Section 87(1) of the Companies Act, 2013, should be filed with the Registrar in Form INC 28 along with the payment of applicable fees as per the conditions stipulated in the said order.

Space to write important points for revision

2018 - June [1] (a) Valuable Ltd. declared dividend at its 10th Annual General Meeting. Mr. Strong holding only 19% equity share had informed the Company that his dividend be paid to Mr. Weak and gave the bank account details of Mr. Weak. When the Company electronically transferred the dividend amount to Mr. Weak's bank account, the amount was returned back to the Company as that bank account was not operative. After the expiry of one month, now Mr. Strong is contemplating to sue the Company for non-payment of dividend. With reference to provisions of Companies Act, 2013, state if his action would be in order. **(5 marks)** ***[CSPP P-1]***

Answer:

Section 127 of the Companies Act, 2013 deals with punishment for failure to distribute dividend. It states that where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the

company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Para (b) of the proviso to Section 127 provides that no offence under this Section shall be deemed to have been committed 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 been communicated to him.

In the instant case, the shareholder i.e. Mr. Strong has directed the company to pay dividend to Mr. Weak.

The company tried to make electronic payment to Mr. Weak but due to his bank account being inoperative the dividend could not get credited to bank account. Therefore, it is not the fault of dividend paying company who duly acted on the direction of Strong. But the company did not communicated this fact to Mr. Strong. This is a non compliance on the part of the company.

Therefore, Mr. Strong can sue the company for non-payment of dividend after one month and his action would be in order.

Space to write important points for revision

2018 - June [2] (a) Tough Ltd. could not hold its 12th annual general meeting by 30th September, 2017 for the year ended 31st March, 2017. It did not apply for extension of time for holding the meeting. The Company filed financial statements with the Registrar of Companies after 11 months. State the consequences of such filing under Companies Act, 2013?

(4 marks) ***[CSPP P-1]***

Answer:

In terms of Section 137(2), in case, the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed

with the Registrar within thirty days of the last date before which the annual general meeting should have been held.

By virtue of Section 137(3) of the Companies Act, 2013, if a company fails to file the copy of financial statements under sub-section (1) or (2), as the case may be, before the expiry of period specified in Section 403, the company shall be liable to penalty of "ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees, for each day during which such failure continues, subject to a maximum of two lakh rupees,"and the managing director and chief financial officer of the company, if any, and, in the absence of them any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company shall be liable to a penalty of ten thousands rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousands rupees.

As the company Tough Ltd. filed financial statement not within time limit as specified under Section 403, the above mentioned provision will be applicable. However, the company can apply the financial statement with the applicable additional fee and go for compounding of offence under Section 441 of the Act.

Note:

Penalty for non-compliance of provisions relating to filing of financial statement:

Copy of financial statements (including consolidated financial statement in case of holding company), shall be filed with Registrar of Companies within 30 days from the date when the accounts where duly adopted at the Annual General Meeting of the company. All documents which are required to be annexed or attached to the financial statement must be filed. The documents are required to be filed with filing fees - **section 137(1) of Companies Act, 2013**.

If financial statements are not filed by due date, company shall be liable to a penalty of ₹ 1,000 per day for every day during which the default continues, but shall not be more than ₹ 10 lakhs. In addition. MD and CEO (and in their

absence all directors) shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees - **section 137(3) of Companies Act, 2013** amended vide the companies (Amendment) Ordinance, 2019 w.e.f. 2.11.2018.

Till 2.11.2018, the section provided for fine in case of company and fine or imprisonment in case of MD and CEO which could be imposed only by Court. Now, penalty can be imposed by RoC or RD who is authorized for this purpose.

Even earlier, the offence was compoundable. However, procedure of compounding had to be complied with. Now, directly penalty can be imposed after issuing Show Cause Notice.

Space to write important points for revision

2018 - June [2] (a) ABC Ltd. having a networth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. **(4 marks)** ***[CMA PAPER - 13]***

Answer:

Eligible company : As per Section 76 of the act a public company which is having a net worth of more than ₹ 100 crores , OR having a net turnover of ₹ 500 crores , is an Eligible company.

Only an eligible public company can accept deposits from publics subjected to certain conditions.

Prior consent of company , in general meeting , by SR File the SR to the registrar before making any initiation.

If proposed deposit is less than net worth of the company then consent of the company can be obtained by OR.

Terms and conditions for eligible companies to accept deposits from public:

A company cannot accept the following deposit.

Demand deposit: Deposits payable within 6 months or after 36 months from the date of acceptance. Deposits may be accepted in joint name but not more than 3 joint depositors.

Since, ABC Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Space to write important points for revision

2018 - June [2A] (Or) (i) The following information is available from the balance sheet of Jupiter Pvt. Ltd. as on 31.3.2018:

	₹ crore
Issued share capital	30
Paid up equity capital	25
General reserve	2
Profit & Loss Account	5
Investment fluctuation reserve	0.75
Fixed asset revaluation reserve	0.25
Unsecured loan	1

Compute the maximum value of Sweat Equity shares that can be issued by the Company as on 31st March, 2018 under the provisions of the Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 54 read with rule 8(4) of Companies (Share Capital & Debentures) Rules 2014 deals with issue of sweat equity shares and limits on issue of the same.

Rule 8(4) states that the company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher.

The issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.
Applying the same in the given situation,
15% of paid up equity share capital = ₹ 3.75 Crore (25*15%)
Now, shares of issue value of ₹ 5 crore is higher than ₹ 3.75 crore.
25% of paid up equity capital = ₹ 6.25 crore (25*25%)

Thus, maximum value of sweat equity shares that can be issued by the company as on 31st March 2018 is ₹ 5 crore. The amount of reserves, profit & loss account and loan are of no relevance in this aspect.

Space to write important points for revision

2018 - June [2A] (Or) (ii) Prince TV Channels Ltd. had ₹ 7 crore as securities premium in its reserves and surplus account in Balance Sheet as at 31st March, 2017. The Company has incurred significant losses in preceding years and as on 31st March, 2017 it has accumulated losses amounting to ₹ 8 crore in the Balance Sheet. In order to present a true and fair view of the financial results, the company wrote off the losses by reducing the amount standing to the credit of securities premium account. With reference to the provisions of the Companies Act, 2013, decide if the action of the Company is valid? **(4 marks)** ***[CSPP P-1]***

Answer:

The issue involved in question has been decided by Mumbai bench of NCLT in the matter of Section 52 and 66 of the Companies Act, 2013 with respect to Dish TV India Ltd.

Section 53(1) of the Companies Act, 2013, *inter alia* provides that 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.

Section 53(2) of the Companies Act, 2013, states that the securities premium account may be applied by the company:

- Towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- In writing off the preliminary expenses of the company;
- In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- In providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- For the purchase of its own shares or other securities under Section 68.

In addition to the above as per Section 53(3) of the Companies Act, 2013, the securities premium account may also be applied by such class of companies, as may be prescribed any whose financial statement comply with the accounting standards prescribed for such class of companies under Section 133:

- In paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- In writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- For the purchase of its own shares or other securities under Section 68.

Therefore, in the given question, the utilization of securities premium account is not out the activities which are allowed under **Section 53(2) and Section 53(3) of the Companies Act, 2013.**

Therefore, as per **Section 53(1) of the Companies Act, 2013,** in order to write off accumulated losses with the securities premium account, the provisions of reduction of share capital shall be complied with by the Company and thus, provisions of **Section 66 of the Companies Act, 2013** shall be complied with by the Company.

Space to write important points for revision

2018 - June [2] (b) Abhiman is a permanent employee of Y2Z Commodities Ltd. with a turnover above ₹ 200 crore for the year ended 31st March, 2018. He is working in India for last two years and is also a promoter of the Company. With reference to the provisions of the Companies Act, 2013, ascertain if Abhiman is eligible to obtain employee stock option. Can the Company offer shares through stock option if Abhiman is a non-independent

additional Director holding 10% of equity shares of the Company is not a promoter? **(4 marks)** ***[CSPP P-1]***

Answer:

Section 62(1) (b) read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 deals with issue of Employee stock options.

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employee's stock option (hereinafter referred to as "Employees Stock Option Scheme"). Unless it complies with the following requirements, namely:

(i) The Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Employee for the purpose of Section 62(1) (b) means:

(a) A permanent employee of the company who has been working in India or outside India; or

(b) A director of the company, whether a whole time director or not but excluding an independent director; or

(c) An employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include:

(i) An employee who is a promoter or a person belonging to the promoter group; or

(ii) A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Applying the above provisions in the case given, Mr. Abhiman is not eligible to obtain shares under Employees' Stock Option scheme as he is a promoter though permanent employee.

(In other cases, the company can issue shares and it can be issued under Employees; Stock Option scheme) to Mr. Abhiman if he is a non-independent additional director and does not hold more than 10% of outstanding equity shares of the company.

Space to write important points for revision

2018 - June [2] (c) Solar Power Limited failed to pay dividend declared in its annual general meeting. The shareholders of the Company filed a complaint against the Company to the Registrar of Companies. The Company contended that it could not pay dividend in time in view of categorical request of its financial institutions from whom the Company has taken term loan and availed working capital facilities for business purpose. Decide if the contention adopted by the Company is tenable. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 127 deals with Punishment for Failure to Distribute Dividends.

It provides that where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed:

(a) Where the dividend could not be paid by reason of the operation of any law;

(b) 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 been communicated to him.

(c) Where there is a dispute regarding the right to receive the dividend;

(d) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

In the present case, the contention is that the company could not pay dividend in time in view of categorical request of its financial institutions from whom the company has taken term loan.

Point (e) of the proviso provides that no offence under this section shall be deemed to have been committed where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Hence the contention adopted by company is tenable.

—— Space to write important points for revision ——

2018 - June [2] (c) (i) X Ltd. appointed CA Innocent as a statutory auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. Comment.

(5 marks) ***[CMA PAPER - 13]***

Answer:

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 which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed:

Further Section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in Section 144.

In the given case, CA Innocent was appointed as an auditor of X Ltd. He was offered additional services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. The auditor is advised not to accept the services as these services are specifically notified in the services not to be rendered by him as an auditor as per Section 144 of the Act.

—— Space to write important points for revision ——

2018 - June [3] (a) Mr. Jubilant, Chairman of Remuneration Committee of your Company wants to know from you as Company Secretary of the Company details to be provided in the Boards' Report under Section 197(12) of the Companies Act, 2013 read with Rule 5 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. The Company is listed in a Stock Exchange in Mumbai. Advise Mr. Jubilant.

(4 marks) ***[CSPP P-1]***

Answer:

Section 197(12) read with Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides for disclosure of following details in the Board's report of the listed company:

(i) The ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

(ii) The percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

(iii) The percentage increase in the median remuneration of employees in the financial year;

(iv) The number of permanent employees on the rolls of company;

(v) Average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any

exceptional circumstances for increase in the managerial remuneration;

(vi) Affirmation that the remuneration is as per the remuneration policy of the company.

Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 also provides for disclosure of a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who:

(i) If employed throughout the financial year, was in receipt of remuneration for that year which in the aggregate, was not less than one crore and two lakh rupees;

(ii) If employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month;

(iii) If employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

Further, the above statement shall also indicate:

(i) Designation of the employee;

(ii) Remuneration received;

(iii) Nature of employment, whether contractual or otherwise;

(vi) Qualifications and experience of the employee;

(v) Date of commencement of employment;

(vi) The age of such employee;

(vii) The last employment held by such employee before joining the company;

(viii) The percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule(2) above; and

(ix) Whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports.

Jubilant, Chairman of the Remuneration committee is to be advised in the lines of above enabling provisions.

Space to write important points for revision

2018 - June [3] (b) Ocean Pvt. Ltd. appointed CA Randhir as statutory auditor of the Company at the last AGM held on 28.9.2016. The next AGM convened on 28.9.2017, after consideration of other business, was adjourned due to non-adoption of annual accounts for the year ended 31.3.2017. State as to whether the appointment of CA Randhir would continue to remain valid and upto which period, even if appointment of another firm of Auditor has been considered and made at the last AGM held on 30.9.2017. **(4 marks)** ***[CSPP P-1]***

Answer:

Pursuant to Section 139 of the Companies Act, 2013 every company shall at each annual general meeting (AGM) ratify the appointment of an auditor or auditors to hold office from the conclusion of that meeting till the conclusion of next AGM.

As per explanation to Rule 3(7) of the Companies (Audit and Auditors) Rules, 2014, if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

In view of the above, if for any reason, the AGM is adjourned to a later date subsequent to the date, the Board shall appoint another auditor only if office

of auditor is not ratified by the members at AGM and thus, he shall continue to hold office till the conclusion of the adjourned AGM.

However, if a new auditor has been appointed in the original meeting in his place, and the meeting is adjourned the, new auditor can function as statutory auditor only from the conclusion of the original meeting.

Thus, in the instant case, the office of CA Randhir shall be valid up to the date of the adjourned AGM. However, if a new auditor was appointed in his place in the AGM held on 30th September, 2017, the office of CA Randhir shall be ceased to have effect w.e.f. the appointment of new auditor.

Space to write important points for revision

2018 - June [3] (c) Mr. Solid was a member of Week Cricket Club, a Section 8 Company with no share capital. Mr. Solid sought a copies of the Memorandum of Association of the Club and copies of general meeting proceedings which were not provided to him. Mr. Solid filed a complaint before Additional Chief Metropolitan Magistrate of the State pursuant to the provisions of the Companies Act, 2013 for non-furnishing of documents by the Club. The Club filed a petition before the High Court of the State for quashing the complaint. Will the Club succeed? **(4 marks)** ***[CSPP P-1]***

Answer:

The facts of the case are similar to that discussed in *Madras Cricket Club v. M. Subbiah CRL.* In this case the respondent was a member of Madras Cricket club (petitioner company/ club), a company within the meaning of **Section 8 of Companies Act, 2013** (Act) with no share capital. The respondent sought a copy of the memorandum of association of the club and copies of proceedings of general meetings which were not provided to him. The respondent filed a complaint before the additional Chief Metropolitan Magistrate, Chennai pursuant to the provisions under Companies Act, 2013 for non furnishing of copies of minutes etc. by the club. The club filed a petition before the High Court of Madras for quashing the complaint.

The High Court quashed the complaint on the ground that the petitioner company did not have a share capital, the responded could not be considered a 'shareholder' under Companies Act, 2013, no Court can take cognizance of any offence unless it is made at the instance the Registrar of Companies, or shareholder or a person authorised by Central Government. The respondent did not fall in any of the above categories.

Section 439 of the Companies Act, 2013 which also states that no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

Thus, accordingly, in the present given case, the Club will succeed.

Space to write important points for revision

2018 - June [4] (c) Pearl Cosmetics Ltd. has not yet called remaining 33% of the face value of its equity shares. Ms. Rukmini, a reputed singer, who has paid 67% call money earlier, wants to pay full 33% to the Company as she will be going out of India for next three months. Can the Company accept such amount from Ms. Rukmini under provisions of the Companies Act, 2013? **(4 marks)**

Answer:

Section 50(1) of the Companies Act, 2013 states that if authorized by its articles a company may accept from any member the whole or part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Where Section 50(2) provides that a member who has paid the whole or part of the amount remaining unpaid on shares held by him even though the company has not made a call for it is not entitled to any voting right at a general meeting on the amount so paid till such amount has been called up.

Accordingly, if authorized by its Articles, Pearl Cosmetics Ltd. can accept from Rukmini 33% of the face value of shares which is not yet called up but she will not be entitled to exercise voting right in any general meeting unless the amount he has paid is actually called up.

Space to write important points for revision

2018 - June [5] (a) Quality Limited, a listed entity, with a paid up capital of ₹ 400 crore proposes to pay the following remuneration:

(i) Commission @ 5% of net profit to Karan, Managing Director;

(ii) Directors under than Managing Director are proposed to be paid monthly remuneration of ₹ 50,000/- and also commission @ 1% of net profit of the Company, subject to the condition that overall remuneration payable to each of them shall not exceed 2% of net profit of the Company. The commission is to be distributed equally amongst all the Directors.

(iii) The Company also proposes to pay suitable additional remuneration to Mr. Diligent, a Director for professional services rendered as Lawyer whenever such services are utilized. **(8 marks)** ***[CSPP P-1]***

Answer:

Quality Ltd, a listed company, being managed by a managing director proposes to pay the following managerial remuneration:

(i) Commission @5% of net profits to its managing director Mr. Karan: Part I of second proviso to section 197 provides that except with the approval of the company in general meeting remuneration payable to anyone managing director or WTD or manager shall not exceed 5% of net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present scenario, Quality Ltd. can pay commission @ 5% to Mr. Karan, Managing Director provided he is not withdrawing any other remuneration. The said remuneration including commission to Mr. Karan can paid up to 5% of the net profit without obtaining the approval of G.M by passing special resolution however, pursuant to the Section 196(4) of the Act, such remuneration shall be approved by the members in the next general meeting.

(ii) Directors other than the MD are proposed to be paid monthly remuneration of ₹ 50,000 and also commission @ 1% of net profits of the company subject to the condition that overall remuneration

payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2% of net profits of the company:

Para (ii) of the second proviso to Section 197 provides that except with the approval of the company in general meeting remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed

(a) 1% of net profits of the company if there is a managing director or whole time director or manager;

(b) 3% of net profits, in any other case;

In the present case, maximum remuneration allowed for directors other than managing or whole-time director is 1% of the net profits of the company because the company is having managing director also. Hence, if Quality Limited wants to fix their remuneration at not more than 2% of net profits of the company, the approval of the company in general meeting on need of CG approval.

(In Question 5 (a)(ii), there is printing error that "Directors other than Managing Director Should have been used instead of Directors under than Managing Director")

(iii) Quality Limited also proposes to pay suitable additional remuneration to Mr. Diligent, a director for professional services rendered as lawyer whenever such services are utilised.

Pursuant to the provisions of Section 197(4) of the Companies Act, 2013, remuneration payable to the directors of a company including any managing director or whole-time director or manager shall be determined in accordance with and subject to the provisions of this section either:

(i) By articles or

(ii) By resolution or

(iii) If articles so require by special resolution passed by company in general meeting and Remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for services rendered by him in any other capacity.

Any remuneration for services rendered by any such director in other capacity, Basically any, is written wrong.

(i) Services are of a professional nature; and
(ii) In the opinion of the Nomination and Remuneration Committee of the company is covered under Section 178(1) or the Board of Directors in other cases the Director possesses the requisite qualification for the practice of the profession.

Hence, in the instant case additional remuneration to Mr. Diligent, a director for profession services rendered as a lawyer will not be included in the maximum managerial remuneration and is allowed provided Nomination and Remuneration Committee/the Board of Directors, as the case may be, opines that Mr. Diligent possess the requisite qualification as a lawyer.

It may be noted that the compliance of Section 177 and Section 188 shall be adhered to by the Company.

Space to write important points for revision

2018 - June [5] (c) (i) A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds, one-tenth of the total paid -up share capital accounting for one - fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividend even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (I) getting the petition admitted and (II) obtaining relief from the Tribunal. **(3 marks)** ***[CMA PAPER - 13]***

Answer:

Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members

holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under Section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. *vs.* M.K. Chandrakanth).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. *vs.* Kuttanad Robber Co. Ltd.)

Thus, the shareholders may not succeed in getting any relief from Tribunal.

Space to write important points for revision

2018 - June [6] (d) Glamour Rise Ltd. wishes to change its registered office from one state to another state for which it is in the process of calling an extra ordinary general meeting and pass resolution thereat. There is no Secretary in the Company, Mr. Sumana, Deputy General Manager (Finance) of the Company has approached you, as a practicing Company Secretary, about the material facts to be set out in the statement to be annexed to the notice of the Company. Advise Mr. Sumana with reference to the provisions of the Companies Act, 2013. **(4 marks)** ***[CSPP P-1]***

Answer:

As per **Section 102 of Companies Act, 2013** in case of special business to be transacted in a meeting a statement setting out materials facts shall be annexed to the notice of calling the meeting.

Accordingly, Glamour Rise Ltd. shall set out the following material facts in its notice of extraordinary general meeting:

(I) (a) Information about the shifting of registered office from one state to another state and justification thereof.

(b) the nature of contract or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any; every other key managerial personnel; and relatives of persons mentioned above.

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

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any and of every other key managerial personnel of the first mentioned company shall, if the extent of shareholding is not less than 2% of the paid share capital of that company, also be set out in the statement.

(II) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected.

Space to write important points for revision

2018 - Dec [1] (a) Sun Ltd. made the following offers during the financial year 2017-18 on private placement basis:

(i) 10,00,000 equity shares of ₹ 10 each at an issue price of ₹ 25 each, to 230 persons, which included 25 Qualified Institutional Bidders;

(ii) Under the above equity issue, 10,000 shares offered to Ram, were allotted to Shyam, his brother in whose favor, Ram had renounced the offer;

(iii) 2,00,000 equity shares of ₹ 10 each to 50 employees of the Company under ESOP scheme;

(iv) 5,00,000 preference shares of ₹ 100 each at par, to 150 persons.

Do you find any violation of private placement provisions by the Company? Will your answer be different if Sun Ltd. was a housing finance company registered with the National Housing Bank under National Housing Bank Act, 1987? **(5 marks)** ***[CSPP P-1]***

Answer:

As per Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules 2014, an offer under private placement shall be made to not more than 200 persons in the aggregate in a financial year, subject to a proviso that offer made to Qualified Institutional Buyers (QIB) and employees under ESOP scheme will not be counted for this limit of 200.

Further, the above restriction will be reckoned individually to each kind of security. Rules provide that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

In view of the above,

(a) The offer made to 230 persons including 25 QIBs is a violation of the rules, as the total number of offers made excluding QIBs exceeds 200.

(b) Section 42 read with Rules provide that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid. Therefore, Ram to whom the offer was made, cannot renounce in favor of Shyam and hence any allotment to Shyam is invalid in terms of private placement rules.

(c) The offer made to 50 employees under ESOP scheme is in order as it is specifically excluded from the limit of 200.

(d) Offer of preference shares made to 150 persons is also in order as the limit of 200 is to be reckoned separately for each kind of security.

These limits are not applicable to a Housing Finance Company registered under the National Housing Bank Act, 1987 and therefore, in that case, all the above offers of Sun Limited will be valid.

Space to write important points for revision

2018 - Dec [1] (c) Divya, a director in 3 companies, finds that she has three DIN obtained on different occasions by mistake. DIN 1 is mapped to X Ltd while DIN 2 is mapped to Y Ltd. and DIN 3 to Z Ltd. Has she contravened any provision of the Act and if so, what is the remedy?

(5 marks) ***[CSPP P-1]***

Answer:

Section 155 of the Companies Act, 2013 provides that no individual, who has already been allotted a DIN under Sec. 154, shall apply for, obtain or possess another DIN. Hence, Divya has violated Sec. 155 and has to surrender the two additional DIN possessed by her.

She has to file e form DIR-5 to surrender the two extra DIN obtained by her, explaining that the two extra DIN were obtained by mistake and without any *malafide* intentions.

MCA (Ministry of Corporate Affairs) has clarified in its website that in such cases, the oldest DIN will be retained and all the subsequent DIN in currency shall be surrendered.

All the entities with which Divya is connected shall be mapped to the oldest DIN while subsequently obtained DIN will be cancelled. [Refer Rule 11(1)(f) of Chapter 11.]

Space to write important points for revision

2018 - Dec [1] (d) Target Ltd. convened a meeting of the Board of Directors on 1st September, 2018 to approve the financial statements of the Company as on 31st March, 2018. The Board has strength of 5 directors and the quorum as per Articles of Association is 3 directors physically present. While 3 directors participated in the meeting physically, the fourth and the fifth directors participated through video conferencing. Do you see any violation on the part of the Company? **(5 marks)** ***[CSPP P-1]***

Answer:

Rule 4 of the Companies (Meetings of Board and its Powers) Rules 2014 stipulates that approval of annual financial accounts cannot be dealt with in any meeting held through video conferencing or other audiovisual means. The board meeting held by Target Ltd. on 1st September 2018 is attended by three directors physically present which satisfies the quorum requirement

and thus is not a meeting conducted through video-conferencing or audiovisual means.

Thus, Target Ltd. can transact the business of approval of financial statements of the company at such meeting.

Sec. 173(2) further provides that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audiovisual means in such a meeting. In that case, Target Ltd. has not contravene any rule in the given occasion.

Space to write important points for revision

2018 - Dec [2] (a) X Ltd., an unlisted public company, with the following:

Paid-up share capital	₹ 25 Crore
Reserves & Surplus	₹ 40 Crore
Annual turnover	₹ 300 Crore

wants to accept deposits from its members and the public. Advise the company on the compliance required. **(4 marks)** ***[CSPP P-1]***

Answer:

X Ltd. does not fall under the definition of "eligible company" under the Companies (Acceptance of Deposits) Rules 2014, the primary condition of which is that a public company shall have net worth of not less than ₹ 100 crores or turnover of not less than ₹ 500 crore. In the above case, neither of the threshold limits are met, hence, X Ltd. is not an "eligible company".

In the above case, X Ltd. can accept deposits only from members of the Company up to a limit of 35% of the aggregate of the paid-up share capital, free reserves and securities premium account . X Ltd. can accept deposits from its members up to an amount of 35% of ₹ 65 Crore. They cannot accept any deposit from the public. However, there is no limit for acceptance of deposit from its directors.

X Ltd. is required to ensure *inter alia* compliance of the following, for acceptance of deposits from members:

(i) The Company is required to pass an ordinary resolution in the shareholders meeting authorizing the acceptance of deposit from the members.

(ii) A Circular should be issued to its members in form DPT-1 and in addition, the company may publish the same in English language in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the sate of the registered office of the company.

(iii) The Company should obtain a credit rating before the submission of the circular to the Registrar as disclosure of the same is required in the circular.

Space to write important points for revision

2018 - Dec [2A] (Or) (i) Comment if the following transactions entered into by A Ltd. attract compliance with provisions relating to acceptance of deposit.

(a) A sum of ₹ 5 lakh paid by Gautam towards subscription to equity shares on 1st April, 2018 was adjusted towards sales invoices for goods supplied to him on 31st August, 2018.

(b) Ashwin, a director of the Company, arranged for ₹ 10 lakh to meet an emergency requirement, by taking a personal loan from State Bank of India.

(c) Bharat, a customer who has bought a machinery from the Company has paid a sum of ₹ 5 lakh towards life-time warranty for the machinery.

(d) A sum of ₹ 1 lakh collected from every employee in April, 2018 towards contribution to a Housing Society which will be formed in January, 2019.

(4 marks) ***[CSPP P-1]***

Answer:

Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 provides for inclusions and exclusions under the term "deposit" for the purpose of compliance of the rules. Part wise answer is given as under:

(a) Sub-rule (vii) provides that the subscription money received against issue of securities is not a deposit provided in case of non-allotment of securities, the money is refunded to the subscriber within 60 days from the receipt of money. Further, adjustment of the money for any other purpose shall not be considered as a refund. Hence this is a case of deposit.

(b) Sub-rule (viii) provides that money received from a director as loan is not a deposit, provided the money is not given by the director out of any loan taken by him from others. In this case, since it is out of a loan from SBI, it does not fall under the exclusion. It is a case of deposit.

(c) Sub-rule (xii) (e) excludes from deposit, any advance received for warranty and maintenance, if the warranty period does not exceed the period prevalent as per common business practice or 5 years whichever is less. In this case, as it is a life-time warranty, it does not fall under the exclusion and hence it is a deposit.

(d) Sub-rule (x) excludes from deposit any non-interest-bearing amount received and held in trust. In this case, company has received the amount in trust, for a housing society to be formed for the benefit of the employees and the money is not interest bearing. Thus it is not a deposit.

Space to write important points for revision

2018 - Dec [2A] (Or) (ii) Smart Ltd., a listed company, has a paid-up share capital of ₹ 50 crore divided into 50 Lakh equity shares of ₹ 100 each, carrying a voting right of one vote per share. The Company needs infusion of funds but the promoters of the Company do not prefer dilution of control. Hence it is proposed to issue further equity shares carrying a voting right of one vote for every 10 equity shares. Advise the Board of Directors on the eligibility conditions to be complied. **(4 marks)** ***[CSPP P-1]***

Answer:

The case is related to issue of shares with differential rights. Rule 4 of the Companies (Share Capital and Debentures) Rules 2014 provides for the following conditions to be satisfied before issuing shares with differential rights:

(a) Issue of shares with differential rights should be authorized by the articles and by an ordinary resolution in the shareholders meeting and by postal ballot in the case of a listed company.

(b) The issue shall not exceed 26% of the total post-issue paid up equity share capital including the equity shares with differential rights, at any point of time.

(c) The Company should have consistent track record of distributable profits for the last three years.

(d) The Company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue shares with differential rights.

(e) The Company has no subsisting default in payment of declared dividend to its shareholders or matured deposits or redemption of preference shares or debentures that have become due for redemption and the interest thereon.

(f) The Company has not defaulted in payment of dividend on preference shares or repayment of term loan from a public financial institution or state level financial institution or schedule bank that has become payable or interest thereon or dues with respect to statutory payments relating to employees or default in crediting the amount to IEPF;
Provided that a company may issue equity shares with differential rights upon expiry of 5 years from the end of the financial year in which such default was made good.

(g) The Company has not been penalized by Court or Tribunal during the last 3 years of any offence under RBI Act, SEBI Act, Securities Contracts (Regulation) Act, FEMA Act or any other special Act under which such Companies are being regulated by sectoral regulators.

(h) The Company cannot convert the existing equity shares into equity shares with differential rights and *vice versa*.

Space to write important points for revision

2018 - Dec [2A] (Or) (iii) Healthy Ltd. provides the following information for the financial year ended 2017-18:

- Paid-up share capital – ₹ 50 Crore
- Profit after tax – ₹ 10 Crore

- The investments have been valued at fair market value which resulted in a gain of ₹ 2 Crore.
- The fixed assets of the Company have been revalued during the year resulting if a gain of ₹ 1 Crore.
- Average dividends declared during the previous three years – 12%.

Calculate the available surplus for the purpose of dividend and the maximum percentage of dividend that can be declared by the company, assuming a 100% payout.

Further, during the current financial year 2018-19, the Company has made a loss in the first two quarters and the company wants to declare an interim dividend of 15% for the financial year 2018-19. Is this feasible?

(4 marks) ***[CSPP P-1]***

Answer:

Proviso to Sec. 123(1) of the Companies Act, 2013 stipulates that profits for the purpose of arriving at available surplus for dividend shall be Computed after excluding any amount representing unrealized gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or liability at fair market value. Hence, Healthy Ltd. has to deduct the gain of ₹ 2 Crore in valuation of investments at fair market value and revaluation gain of ₹ 1 Crore in respect of the fixed assets. Hence, the available surplus for the purpose of declaration of dividend shall be ₹ 7 Crore. The maximum percentage of dividend that can be declared shall be 14% (₹ 7 Crore on ₹ 50 Crore paid up share capital) for the financial year 2017-18.

Proviso to Sec. 123(3) of the Act provides 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 dividend declared by the Company during immediately preceding three financial years. Hence, Healthy Ltd. cannot declare interim dividend in 2018-19 at a rate exceeding 12% as the Company has made a loss in the preceding two quarters.

Space to write important points for revision

2018 - Dec [2A] (Or) (iv) X Ltd. is a wholly owned subsidiary of Y Ltd. As on 31st March 2018, X Ltd. owns 60% of equity in A Ltd. and 26% of equity in B Ltd. Y Ltd. has totally 8 shareholders. Y Ltd. files consolidated accounts of all subsidiaries in accordance with Schedule III of the Act and the relevant accounting standards. Advise the Board of Directors of X Ltd. if they are required to consolidate the financial statements of A Ltd. and B Ltd. while presenting their financial statements mandatorily. **(4 marks)** ***[CSPP P-1]***

Answer:

As per Sec. 129(3) of the Act, a Company which has one or more subsidiary or associate companies shall prepare consolidated financial statements in accordance with the provisions of Schedule III of the Act, and the applicable accounting standards. Proviso to Rule 6 of the Companies (Accounts) Rules 2014 stipulates that consolidation of accounts by a Company is not required if:

- The Company is a wholly owned subsidiary or partly owned subsidiary of another company and all its members have been informed in writing about the Company not presenting consolidated financial statements and no member objects to it.
- The Company is not listed or in the process of listing.
- The ultimate holding company or any intermediate holding company files consolidated financial statements with the Registrar which are compliant with the applicable accounting standards.

In respect of X Ltd. it is a wholly owned subsidiary of Y Ltd. Y Ltd. files consolidated accounts with the Registrar in compliance with the rules. A Ltd. is a subsidiary of X Ltd. and B Ltd. is an associated Company of X Ltd.

Hence, in accordance with second proviso to Rule 6 of the Companies (Accounts) Rules, 2014, X Ltd. is not required to consolidate the accounts of A Ltd. and B Ltd. if Y Ltd. intimates in writing to X Ltd. for not preparing consolidated financial statements. Provided that proof of delivery of such intimation shall be maintained with the X Ltd.

Space to write important points for revision

2018 - Dec [2] (b) Infra Ltd. came out with an IPO of equity shares in April 2018. The prospectus issued for the purpose explained that the purpose of

the IPO was to fund a 1000 MW mega solar power project and substantiated the position by citing the contract they have won from Solar Power Corporation with a tariff rate of ₹ 4.00 per k Whr. Prashant subscribed to the IPO for 50,000 equity shares at ₹ 10 each, which was duly allotted by the company. Subsequently in July 2018, the Company came out with an update that the tariff rate in the above contract has been slashed down to ₹ 3.00 per k Whr. Prashant is of the view that the company will lose money with such a low tariff and would not like to continue his investment in the company. The said equity share was trading at ₹ 7.00 in the market. Is there any remedy available to Prashant? Advise. **(4 marks)**

Answer:

Sec. 27 of the Companies Act, 2013 provides that where there is a variation in the contract indicated in the prospectus, On the basis of which the Company issued securities, the Company needs to get the approval of the shareholders in the general meeting by way of a special resolution.

The dissenting shareholders, being those shareholders who have not agreed to the proposal to vary the said terms of contract referred to in the prospectus, shall be given an exit offer by the promoters or controlling shareholders of the Company at such exit price and terms and conditions as may be specified by SEBI.

Hence, Prashant can exercise the exit offer made by the Company and mitigate his loss.

2018 - Dec [2] (b) BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. **(4 marks)** ***[CMA PAPER - 13]***

Answer:

Interim Dividend: under 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.

Although, 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.

In the given case, interim dividend by BET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (11+16+18)/3=45/3=15%]. Hence, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Space to write important points for revision

2018 - Dec [2] (c) Liberty Ltd., an unlisted company, registered in the State of Maharashtra with 20 shareholders wants to organize the annual general meeting of the company for the financial year 2017-18 as under:

(i) The meeting shall be held on 17th September, 2018 which happens to be Raksha Bandhan, a day declared as holiday by Maharashtra Government.

(ii) The venue for the meeting shall be Ootacamund, a hill resort in Tamil Nadu.

Advise the Company on the feasibility of the above. **(4 marks)** ***[CSPP P-1]***

Answer:

(i) Sec. 96(2) of the Companies Act, 2013 provides that every annual general meeting shall be called on any day that is not a national holiday. Thus, Raksha Bandhan, not being a national holiday but only a local holiday declared by the Government of Maharashtra, calling of annual general meeting on that day does not contravene the rules.

(ii) The Section further provides that the annual general meeting shall be held 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. The section has a proviso that the 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. So, in this case, if Liberty Ltd, being an unlisted company, can obtain a consent in writing or through electronic mode from all the 20 shareholders of the Company, then the meeting can be validly held at Ootacamund.

Space to write important points for revision

2018 - Dec [2] (d) Peak Ltd., a listed company, proposes to issue Non-Convertible Debentures for an amount of ₹ 500 Crores to the public, incorporating call and put options only to the retail investors. Enumerate the conditions to be complied for the purpose. **(4 marks)** ***[CSPP P-1]***

Answer:

A call option is one where the company issuing the NCDs has a right to recall the securities prior to maturity and put option is one where the investors get a right to redemption of the securities prior to maturity.

Peak Ltd. while making the offer for issue of NCDs with call and put option only to the retail investors, shall ensure compliance with the following conditions:

(a) Such right shall be exercised in accordance with the terms of issue like the date from which such right is exercisable, period of exercise which shall not be less than 3 working days, redemption amount including the premium or discount at which the redemption shall take place etc.

(b) The call or put option may be exercised for the entire securities issued or invested or only for a part of the issue.

(c) In case of exercise on part of the issue, it shall be done on proportionate basis only.

(d) No such right shall be exercisable before the expiry of 24 months from the date of issue of the securities.

(e) Peak Ltd. shall send notice to all the eligible holders of such securities at least 21 days before the date from which such right is exercisable.

(f) Peak Ltd. shall also provide a copy of such notice to the stock exchange where such securities are listed for wider dissemination and shall make

an advertisement in the national daily having wide circulation indicating the details of such right and the eligibility of the holders who are entitled to avail such right.

(g) The Company shall pay the redemption proceeds to the investors along with interest due to the investors within 15 days from the last day within which such right can be exercised.

(h) The company shall pay interest at 15% p.a. for the period of delay, if any.

(i) After the completion of the exercise of such right, the company shall submit a detailed report to the stock exchange for public dissemination regarding the securities redeemed during the exercise period and details of the redemption thereof.

Space to write important points for revision

2018 - Dec [3] (a) A public company secured residential accommodation for the use of its Managing Director by entering into a leave and licence arrangement with the landlord. As per the terms of the agreement, the company deposited a sum of ₹ 5,00,000 as rental advance with landlord.
Can it be considered as a loan given to the director?
Explain the relevant provisions. **(4 marks)** ***[CSPP P-1]***

Answer:

According to Section 185(1) of the Companies Act 2013, no company shall directly or indirectly advance any loan including any loan represented by a book debt, to any of its directors, or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

In the above case, housing accommodation is provided to the managing director. The company has not given any advance or loan to the Managing Director.

The amount deposited with the landlord in respect of housing accommodation cannot be said to be an indirect loan to the Managing Director as the contract has been entered into by the company with the landlord.

The company has paid the security advance on account of a bonafide business transaction towards the fulfillment of condition of contract entered by the company with the landlord.

The company can at any time have the house vacated by the Managing Director and Company may accommodate any other person in the said house or Company can use it for any other purpose at its own discretion.

Thus, this transaction does not amount to loan by the company to the Managing Director. *[case law Dr. Fredie Ardeshir Mehta V. Union of India [1991] 70 Comp. Cas. 210 (Bom.)]*

Space to write important points for revision

2018 - Dec [3] (b) Cautious Ltd., an unlisted company with 1200 shareholders proposes to extend loans and make investments in excess of the limits prescribed under Sec. 186(3) of the Act. As part of the compliance requirements, the Company is required to pass a special resolution. Advise the Company if a polling by show of hands is adequate or a poll is required.

(4 marks) ***[CSPP P-1]***

Answer:

As per Rule 22(16) of the Companies (Management & Administration) Rules 2014, it is mandatory for a company with more than 200 members to transact the business of authorizing provision of loans or guarantees in excess of the limit specified under Sec. 186(3) of the Act only through postal ballot and not by show of hands.

Rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to the postal ballot in respect of the voting by electronic means.

Under the circumstances, it is mandatory for Cautious Ltd. being an unlisted company, with 1200 members to conduct a poll and electronic means to approve the lending under Sec. 186(3) of the Act.

Space to write important points for revision

2018 - Dec [3] (b) Mr. Faithful is an auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. for 2016-17, he finds manipulation of funds around ₹ 2 crore committed by the officers of the company against the Daga Ltd.

Examine in the light of the Companies Act, 2013 the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. in relation to reporting of such frauds. **(7 marks)** ***[CMA PAPER - 13]***

Answer:

Reporting of frauds by auditor and other matters : As per Section 139 read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officer or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as given below:

1. **The auditor shall report the matter to the Board or the Audit Committee**, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
2. On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
3. In case the auditor fails to get any reply or observations from the board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations ;
4. The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgment Due or by Speed Post followed by an email in confirmation of the same;
5. The report shall be on the letter-head of the auditor containing postal address, email address and contact telephone number or mobile number

and be signed by the auditor with his seal and shall indicate his Membership Number; and

6. The report shall be in the form of a statement as specified in Form ADT-4.

   Particular of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report by the company:

   (a) Nature of Fraud with description;
   (b) Approximate Amount involved ;
   (c) Parties involved, if remedial action not taken; and
   (d) Remedial actions taken.

Space to write important points for revision

2018 - Dec [3] (c) Fashion SpA is a Company incorporated in Italy, having a place of business in Mumbai for the conduct of its business. For the year ended March, 2018, Fashion SpA filed their financial statements with the ROC in compliance with Sec. 381 of the Act, which declared a turnover of ₹ 1,200 Crore and net profit of ₹ 49 Crore. Advise the Company on the applicability of CSR Provisions and the compliance, if any, required.

(4 marks) ***[CSPP P-1]***

Answer :

Sec. 135 of the Companies Act, 2013 provides the threshold limits for a company to get attracted by the CSR provisions as turnover of ₹ 1,000 Crore or more, networth of ₹ 500 Crore or more and net profit of ₹ 5 Crore or more, Rule 3 of the Companies (CSR Policy) Rules 2014 further clarifies that Sec. 135 shall be applicable to a foreign company defined under Sec 2(42) of the Act and the threshold numbers for testing the applicability of Sec 135 shall be as per the financial statements filed by the foreign company under Sec. 381 of the Act.

Hence, Fashion SpA attracts the provisions of Sec. 135 as they are above the threshold limit.

Therefore, the Company has to form a CSR Committee in line with the provisions, frame the CSR policy and spend at least 2% of the average

profits of the Company for the preceding three financial years. The net profit for the purpose shall be computed in line with Sec. 198 of the Act.

Space to write important points for revision

2018 - Dec [3] (d) Flex Ltd., a Company incorporated in 2001, has 8 shareholders with a net worth of ₹ 2 Crore. During the month of August 2018, Flex Ltd. got a term loan of ₹ 10 Crore sanctioned by a scheduled bank which was immediately availed. On 1st January, 2018, based on their request, the Company registered the transfer of the entire shares held by 5 shareholders in favour of Ram, another shareholder of the Company. Discuss the consequences. **(4 marks)** ***[CSPP P-1]***

Answer:

Sec 3A of the Act provides that if at any time, the number of members of a Company is reduced (in the case of public company below 7 and in case of private company below 2) and the company carries on business for more than 6 months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is carrying on business with less than the required number, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

Flex Ltd. by making a share transfer in January 2018 got its members reduced to 3, below the statutory minimum of 7. Thus, the Company will attract the provisions of Sec. 3A when a term loan was availed by the Company from a scheduled bank. Under the circumstances, the remaining three shareholders shall become severally liable for the repayment of the term loan and the concerned scheduled bank can proceed against them individually.

Space to write important points for revision

2018 - Dec [4] (a) Star Ltd., is a company incorporated in Tamil Nadu in which 26% of the equity is held by the Government of Tamil Nadu in the name of the Governor of the State. When the Company proposed to hold its annual general meeting for the year 2017-18, the Collector of the District of

Vellore where the company is situated, insisted on receiving the notice of the AGM and wanted to attend the meeting. Examine the legality of the claim.

(4 marks) ***[CSPP P-1]***

Answer:

As per Sec. 112 of the Companies Act, 2013, when the President of India or the Governor of a State is a member of a company, he may appoint such person as he thinks fit to Act as his representative at any meeting of the company or at any meeting of any class of members of the company.

A person so nominated shall be deemed to be a member of the Company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or Governor as the case may be, could exercise as a member of the company.

In view of the above, unless the Collector of the District of Vellore is nominated by the Governor of Tamil Nadu, he is not entitled to receive the notice of the AGM and he cannot be permitted to attend the meeting.

Space to write important points for revision

2018 - Dec [4] (c) Medium Ltd. an unlisted company with a net worth of ₹ 5 Crore and turnover of ₹ 50 Crore has 200 shareholders spread across the country. Out of this, 175 shareholders hold their shares in dematerialized format while the rest hold in physical format. The Company wants to circulate the financial statements for the year ended 31st March, 2018 in the most efficient way. Advise. **(4 marks)** ***[CSPP P-1]***

Answer :

Rule 11 of the Companies (Accounts) Rules 2014 provides for the manner in which circulation of financial statements can be made to the eligible members. In case of all listed companies and such public companies with a net worth of more than ₹ 1 Crore and turnover of ₹ 10 Crore, the financial statements may be sent:

- By electronic mode to such members whose shareholding is in dematerialized format and whose email ids are registered with Depository for communication purposes;

- Where shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode and;

For the rest, by dispatch of physical copies through any recognized mode of delivery such as registered post, speed post, courier etc. as specified under section 20 of the Act.

In the present case, Medium Ltd. can send the financial statements by electronic mode to the 175 shareholders who hold in dematerialized format and can approach the balance 25 shareholders to get their consent for receiving the financial statements by electronic mode. To the extent, they succeed in getting such consent, the circulation will be efficient. Where they are not successful, they can send them in physical mode.

Space to write important points for revision

2018 - Dec [4] (d) Super Pharma Inc, a company registered in USA has a place of business in India with manufacturing operations and is dealing in Cardiac Stents in addition to other medical equipment. The overall turnover of the company is ₹ 200 crore during the financial year 2017-18 while the turnover relating to Cardiac Stents was ₹ 40 Crore. It is to be noted that out of this, ₹ 25 Crore related to the Cardiac Stents manufactured in its Indian facility while the balance ₹ 15 Crore related to the Cardiac Stents imported from their parent in USA and traded in the Indian market.

Advise the company on the applicability of Cost Records and Audit to the Company during the financial year 2018-19. Will the position differ, if the export turnover of Cardiac Stents for the company was ₹ 32 Crore during the said period? **(4 marks)** ***[CSPP P-1]***

Answer:

As per Rule 3 of the Companies (Cost Records and Audit) Rules 2014, companies, including foreign companies, engaged in the production of goods or services specified in the table given in the Rule 3 having an overall turnover from all its products and services of ₹ 35 Crore or more during the immediately preceding financial year are required to maintain cost records for the products and services included in such table. Production, import and supply or trading of Cardiac Stents is included in Point No. 33 of such table

under non-regulated sector. However, as per proviso to Rule 3, nothing contained in serial number 33 shall apply to foreign companies having only liaison offices.

Further, as per Rule 4, every company covered under Rule 3 in non-regulated sector shall get its cost records audited if the overall turnover of the company from all its products and services during the immediately preceding year is ₹ 100 Crore or more and the aggregate turnover of the individual product or service for which cost records are maintained is ₹ 35 Crore or more.

Hence, in the instant case, since the Super Pharma has manufacturing operations in India and having overall turnover of ₹ 200 Crore and the turnover from Cardiac Stents is ₹ 40 Crore, cost audit is mandatory for the company for Cardiac Stents.

Rule 4(3) provides exemption from cost audit if the revenue from exports in foreign exchange exceeds 75% of its total revenue. Therefore, in case if Supper Pharma Inc has an export turnover of 80% then they will be exempted from the requirement of cost audit in respect of Cardiac Stents.

Space to write important points for revision

2018 - Dec [5] (a) Fortune Ltd. proposes to draw a term loan of ₹ 20 Crore from Life Insurance Corporation. The Company owns a property comprising of land and buildings valued at ₹ 100 Crore. As per the sanction letters issued by the lender, a first charge on the above property is to be created in favor of LIC. Draft necessary resolution to give effect to the above charge creation. **(8 marks)** ***[CSPP P-1]***

Answer:

Resolution under Sec. 180(1)(a) of the Companies Act, 2013 for creating a charge on company's assets

Kind of Meeting : Shareholders meeting

Type of Resolution : Special Resolution

To consider and, if thought fit, to pass with or without modification(s), the following resolution as a special resolution:

"RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 to mortgaging and/ or charging by the Board of Directors of the Company by way of equitable and/or legal mortgage on immovable property of the Company, both present and future, represented by land and buildings more specifically described in the loan agreement document signed by the Company with Life Insurance Corporation, together with power to take over the assets of the Company in certain events, to or in favor of Life Insurance Corporation of India (LIC) by way of first pari passu charge to secure the term loan of ₹ 20 Crore granted to the Company, together with interest at the agreed rate payable by the Company under the loan agreements, hypothecation deeds and other documents executed or to be executed by the Company in respect of the term loans from LIC.

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorized to finalize with Life Insurance Corporation, the documents for creating the aforesaid mortgage or charge and to do all acts, deeds and things as may be required for giving effect to the above resolution.

Explanatory statement:

Life Insurance Corporation of India (LIC) have sanctioned term loan of ₹ 20 Crore to the company. This loan is to be secured by first charge on immovable property of the Company, both present and future, represented by Land and Buildings owned by the Company, in the manner as may be required by LIC. Such mortgage/charge shall rank first pari passu charge with the charges already created, if any, or to be created in favor of the participating institutions and banks for their assistance.

Section 180(1)(a) of the Companies Act, 2013 provides *inter alia,* that the Board of Directors of a public company shall not, without the consent of a public company in general meeting, sell, lease or otherwise dispose off the whole or substantially the whole of any such undertaking. Mortgaging/charging of the immovable property of the Company as aforesaid to secure the term loans may be regarded as disposal of the whole or

substantially the whole of the said undertaking(s) of the Company and therefore requires consent of the Company pursuant to Section 180(1)(a) of the Companies Act, 2013.

The Directors recommend the resolution for approval of the shareholders as a special resolution under Sec. 180(1)(a) of the Companies Act, 2013.

None of the directors are concerned or interested in the proposed resolutions.

Notes:

Section 180(1)(a) will arise only when the whole or substantially the whole of the undertaking is being sold, leased or otherwise disposed off. If the company has land, say, worth about ₹ 5000 crores, it may not be attract the section.

Further, under Rule 22(16)(j), resolution under Sec. 180(1)(a) needs to be passed by postal ballot.

Space to write important points for revision

2018 - Dec [5] (a) A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability.

Examine their contention having regard to the provisions of the Companies Act, 2013. **(4 marks)** ***[CMA PAPER - 13]***

Answer:

1. The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintainability is not correct.
2. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry*

Electric Corporation vs. V. Nageswar Rao, A.I.R. (1956) S.C. 213 that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition.

3. Hence, the validity of the petition must be judged on the facts as they were at the time of presentation.
4. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

Space to write important points for revision

2018 - Dec [5] (c) Ram and Sam are the independent directors of Taurus Ltd. Ram was appointed for a period of 5 years on August 1, 2015 while Sam was originally appointed for 3 years on August 1, 2014 and was subsequently reappointed for 5 years on August 1, 2017. Now, in August 2018, the Company wants to remove both the independent directors. Is this feasible and if so, what is the procedure? **(4 marks)** ***[CSPP P-1]***

Answer:

Sec. 169 of the Companies Act, 2013 provides that a company may, by ordinary resolution, remove a director before the expiry of the period of office, after giving him a reasonable opportunity of being heard. The proviso to the section stipulates that an independent director re-appointed for a second term shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

In the above case, Taurus Ltd. can remove Ram who was appointed on Aug 1, 2015 for a term of 5 years, by passing an ordinary resolution after giving him a reasonable opportunity of being heard, as this is the first term for Ram.

Notwithstanding, to remove Sam who was re-appointed for the second term on Aug 1, 2017, the company needs to pass a special resolution and further give him a reasonable opportunity of being heard.

Space to write important points for revision

2019 - June [1] (b) Dynamic Limited, a Company registered in India, has a wholly owned subsidiary M Inc registered in USA. M Inc has further layers of wholly owned subsidiaries N Inc and P Inc, all registered in USA.
Advise the Company on the following:

(a) N Inc wants to exit their holdings in P Inc and take over Q Inc as a wholly owned subsidiary.

(b) Dynamic Ltd. wants to mirror image a similar set up in France. Advise the feasibility of creating such layers of subsidiaries in France.

(5 marks) ***[CSPP P-1]***

Answer:

Section 186(1) of the Act read with Rule 2 of the Companies (Restriction on number of layers) Rules, 2017, prohibits a company from having more than two layers of subsidiaries. Further, every company existing on or before the commencement of these rules, which has number of layers in excess of two shall file with the registrar a return in form CRL-1 and shall not after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date. Also, the company, in case one or more layers of its subsidiaries are reduced by it subsequently to the commencement of these rules, shall retain the layers after such reduction subject to maximum of two layers. Further, second proviso of rule 2 of Companies (Restriction on number of layers) Rules, 2017 provides that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

Applying the above provisions, M Inc., being wholly owned subsidiary of Dynamic Ltd. shall not be counted into a layer. under the aforesaid provisions of the Companies (Restriction on number of layers) Rules, 2017.

(a) Excluding M Inc. the wholly owned subsidiary. Dynamic Ltd. Has only two layers of subsidiaries i.e. N Inc. and P Inc. Hence, N Inc. can exit from P Inc. and take over Q Inc. while being compliant with the applicable provisions.

(b) And yes, it can create such layers of subsidiaries in France also, if it is permitted under the local laws of France, as long as the number of layers of subsidiaries as computed under Section 186(1) read with Rule 2 of Companies (Restriction on number of layers) Rules, 2017 doesn't exceeds more than 2 layers.

Space to write important points for revision

2019 - June [1] (c) Comment, if in the following cases, the person concerned will be disqualified to be appointed as a director of a public limited company:

(a) Ram has an application pending for adjudication as an insolvent and the application is not yet decided by the authority.

(b) Govind was convicted for an offence, not involving any moral turpitude, and sentenced to imprisonment for a term of 8 years, but a period of more than 5 years has elapsed from the expiry of the sentence.

(c) Raja has not paid the final call on 10,000 equity shares held by him in the Company so far. The company had fixed 31st May, 2019 as the last date for the payment of the call money.

(d) Keshav, who was a director in another company previously, had contravened the provisions relating to related party transactions and was convicted during 2017.

(e) Prakash holds directorship in a total of 15 companies as on date comprising of 9 public companies, 2 private companies which are subsidiaries of a public company and 4 private companies.

(5 marks) ***[CSPP P-1]***

Answer:

Section 164 of the Companies Act, 2013 provides disqualification for Appointment of Director resulting a person is considered as disqualified for his appointment as a director of the company. Accordingly,

(a) A person who has applied to be adjudicated as an insolvent and his application is pending shall be disqualified. Therefore, Ram is disqualified from appointment.

(b) A person who has been convicted for an offence, whether or not involving moral turpitude and sentenced for more than 7 years cannot be

appointed even after the lapse of 5 years from the expiry of the sentence, shall be disqualified. Hence, Govind is disqualified.

(c) A person who has not paid the calls on shares due and a period of 6 months have elapsed from the due date fixed for payment, shall be disqualified. In this case, since a period of 6 months has not yet elapsed from the due date fixed for payment of call money. which is 31st May 2019 and therefore, Raja is not disqualified.

(d) A person who has contravened the provisions of section 188 and has been convicted any time during the last 5 years shall be disqualified. Keshav was Convicted for violation of section 188, during 2017 which is within preceding 5 years and is therefore disqualified.

(e) Section 165 provides that the maximum number of companies in which a person can be a director shall not exceed 20 companies in which public companies should not be more than 10. Private companies that are subsidiaries of public companies shall be treated as public companies for this purpose. Accordingly, Prakash, who is a director in 11 public companies shall be disqualified to be so appointed in another public company.

Space to write important points for revision

2019 - June [1] (d) Elegant Ltd., engaged in the retailing of petroleum products sourced from the national oil companies, sells petrol and diesel, in addition to other outside customers, to the companies in which the directors of the Company hold directorship. The total value of supplies made to such companies during the year 2018-19 amounted to ₹ 125 Crore. This forms 12% of the annual turnover of Elegant Ltd.

Explain the compliance requirements for Elegant Limited assuming: (i) The products are sold by Elegant Limited to those companies at the market price announced by the oil marketing companies and (ii) Elegant Ltd. provides a discount of 10% on such market price on its sale to only those companies and not to others. **(5 marks)** ***[CSPP P-1]***

Answer:

Section 188 of the Companies Act, 2013, read with Rule 15(3) of the Companies (Meetings of the Board and its powers) Rules, 2014 provides that where the related party transaction in a financial year for sale or supply of goods, materials exceeding ₹ 100 crores or 10% of the turnover of the company, whichever is lower, such contract shall not be entered except with the consent of the Board of Directors given by a resolution at a meeting of the Board and prior approval of the company by a resolution passed at a General Meeting. The 4th proviso to the Section 188(1) further provides that where the transaction is entered into in the ordinary course of business and the transactions are at arm's length basis, the provisions of Section 188(1) shall not apply to such transaction.

(i) In the given case, Elegant Ltd. has crossed the threshold limit of the transaction by way of sale of petroleum products for ₹ 125 crore which forms 12% of its turnover. However, then such petroleum products are sold, in the ordinary course of business at arm' s length prices. i.e. without offering any discount at the market price fixed by the oil marketing companies. Accordingly, the provisions of Section 188(1) shall not apply to this transaction and such transactions could be done as any other routine business transaction.

(ii) In the given case, Elegant Ltd. is allowing a discount of 10% to such related parties, and therefore the transaction cannot be considered to be at arm's length. Moreover, the value of Transaction with such related parties during the financial year is more than the limit prescribed under Rule 15(3) of the Companies (Meetings of the Board and its powers) Rules 2014, being 10% of the turnover and hence, consent of the Board of Directors given by a resolution at a meeting of the Board and prior approval of the company by a resolution passed at a General Meeting is required for entering into each of such contract.

Space to write important points for revision

2019 - June [2] (a) Alpha Ltd, during the regular audit, ascertained the following contraventions during the financial year 2018-19, which have not been rectified till date:

(a) The annual returns and financial statements for the year ended March 2018 have not been filed with the Registrar.
(b) Cumulative debentures amounting to ₹ 5 crore which became due for redemption during March 2019 were not redeemed.
(c) Charge created on the factory premises in June 2018 was not registered with the Registrar.

The Company proposes to change its name from Alpha Ltd. to Gama Limited. Advise on the feasibility. **(4 marks)** ***[CSPP P-1]***

Answer:

Rule 29 of the Companies (Incorporation) Rules, 2014 provides that the change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the registrar or which has failed to pay or repay matured deposits or debentures and interest thereon. The proviso to the rule states that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon, as the case may be.

In the instant case, Alpha Ltd has defaulted in filing of annual returns and financial statements for the year ended March. 2018 with the Registrar and also the redemption of debentures which were due for redemption during March, 2019. Hence, in terms of the above referred Rule 29 the company will be allowed to change its name from Alpha Limited to Gama Limited only after the ratification of such contraventions.

However, non-filing of charge is not covered under the above referred rule 29 and hence the application for change of name can be proceeded with, even before filing for registration of the charge.

Space to write important points for revision

2019 - June [2A] (Or) (i) Pluto Limited has a paid-up equity share capital of ₹ 10 crore comprised of :

(a) 80 lakh equity shares of ₹ 10 each fully paid up
(b) 40 lakh equity shares of ₹ 10 each on which only ₹ 5 per share is paid up.

The company wants to pay dividend in proportion to the amount paid up, even though the articles of the company is silent on this, Is it tenable?

(4 marks) ***[CSPP P-1]***

Answer:

Section 51 of the Companies Act, 2013 provides that a company may, if so authorised by its articles. pay dividends in proportion to the amount paid-up on each share. The section allows a company to pay dividends in proportions to the amount paid-up on each share. when they are not uniformly paid up.

In the instant case, Pluto Ltd has equity shares that are not uniformly paid up. But, the articles of association of the company is silent as to whether dividends can be paid on pro rata basis. Hence, Pluto Ltd cannot pay dividend in proportion to the amount paid up, unless the articles of association of the Pluto Ltd expressly provide for such pro rata payment.

Space to write important points for revision

2019 - June [2A] (Or) (iii) Decide, quoting the relevant provisions, if the following shareholders of Minimum Ltd. fall under the definition of Significant Beneficial Owner:

(a) Lakshman holds 12% of the equity share capital in Minimum Limited, as a sole shareholder;

(b) C Ltd. holds 20% of the equity share capital of Minimum Limited. Krishna holds 75% of the equity share capital in C Limited while Guha holds the balance 25% equity in C Ltd.

(c) Ashok is the trustee of a Charitable Trust, which holds 20% of equity share capital in Minimum Limited. **(4 marks)** ***[CSPP P-1]***

Answer:

(a) According to Rule 2(1) (e) of the Companies (Significant Beneficial Owner) Rules, 2018, to be a SBO the name of SBO should not be in the Registered of Member. In this case Lakshman is holding 12% of the equity share capital as a sole shareholder in his own name. Therefore, he does not fall under the definition.

(b) According to Explanation I (i) to Rule 2(1)(e) of the Companies (Significant Beneficial Owner) Rules. 2018, where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. share capital of the company or who exercises significant influence or control in the company through other means. In present case, Krishna who holds 75% of the equity capital in C Ltd is indirectly holding 15% (75% of 20%) in Minimum Ltd. as C Ltd. holds 20% of the equity share in Minimum Ltd. and hence, he is a significant beneficial owner. Guha who holds only 25% in C Ltd. is indirectly holding 5% (25% of 20%) in Minimum Ltd as C holds 20% equity share capital in C Ltd hence he is not a significant beneficial owner.

(c) Accordingly to Explanation I (iv) to Rule 2(1)(e) of the companies (Significant Beneficial Owner) Rules 2018, where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent. interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

Ashok, the Trustee of a charitable trust that holds 20% equity in Minimum Ltd. falls under the definition of significant beneficial c Atner.

Alternate Answer:

Companies (Significant Beneficial Owners) Amendment Rules, 2019

Rule 2(h) of the Companies (Significant Beneficial Owner) Amendments Rules 2019 defines the term significant beneficial owner in relation to a reporting company as an individual, who acting alone or through one or more persons or trust possesses one or more of the following rights or entitlements in the reporting company

a. Holds indirectly or together with direct holdings not less than 10% of shares
b. Holds indirectly or together with direct holdings not less than 10° of voting rights in shares.

c. Has a right to receive or participate in not less than 10% of the total distributable dividend or any other distribution in a financial year through indirect holdings along or together with any direct holdings.

d. Has a right to exercise or actually exercises significant influence or control in any manner other than through direct holdings alone.

Further:

(i) in terms of Explanation I and Explanation II (i) to Rule 2(h) of the Companies (Significant Beneficial Owner) Rules 2018, if the shares in the reporting company representing such right or entitlement are held in the name of the individual then such individual shall not be considered to be SBO.

(ii) in terms of Explanation III(i)(a) to Rule 2(h) of the Companies (Significant Beneficial Owner) Rules 2018. where the member of the reporting company is a body corporate (whether incorporated in Indian or not), then the significant beneficial owner shall be such natural person, who holds majority stake of that member

(iii) in terms of Explanation III(iv)(a) to Rule 2(h) of the Companies (Significant Beneficial Owner) Rules 2018, where the member of the reporting company is a Charitable trust (through trustee), the individual who is the Trustee in case of a Charitable Trust, shall be considered to be the SBO.

Accordingly:

(a) Lakshman is holding 12% of the equity share capital in the reporting company in his own name and therefore cannot be considered as SBO.

(b) Krishna who holds 75% of the equity capital, i.e. is a majority stakeholder in C Ltd. which is a member of Minimum Ltd. and hence Krishna is a significant beneficial owner. Guha who holds only 25% and not a majority stake, does not fall under the definition.

(c) Ashok, the trustee of a charitable trust that holds 20% equity in Minimum Ltd falls under the definition of significant beneficial owner.

Space to write important points for revision

2019 - June [2A] (Or) (iv) Fresh Limited wants to extend a loan of ₹ 2 crore to High Private Limited. Harihar, a director of Fresh Limited is also a director in High Private Limited. Is it feasible? **(4 marks)** ***[CSPP P-1]***

Answer:

Section 185(2) of the Companies Act, 2013 provides that a company may advance any loan to any person in whom any of the directors of the company is interested subject to –

a. passing of a special resolution by the company in general meeting and the explanatory statement in the notice for the relevant general meeting shall indicate the full details of the loan and the purpose for which the loan is to be utilized by the recipient of the loan and
b. The loan is utilized by the borrowing company for its principal business activities. For the purpose of these provisions the term, "Any person in whom any of the directors of the company is interested" includes any private company of which any such director is a director or member.

Accordingly, Fresh Ltd can extend loan of ₹ 2.00 crores to High Private Ltd., in which Hari har is a common director, subject to the fulfilment of the above referred conditions of Section 185(2).

Space to write important points for revision

2019 - June [2] (b) Tarun deposited ₹ 1,00,000 in April 2018 with F Ltd., an unlisted public company carrying on manufacturing operations for a term of 3 years. Tarun seeks your advice on the following:

(a) Tarun has an emergency in November 2018 at home for which he needs the above funds immediately. Can he get back the money without any deductions?
(b) During December 2018, F Ltd. was issued at notice by the Reserve Bank of India declaring the deposit scheme invalid as F Ltd. had paid brokerage in excess of the limits prescribed by RBI. Can Tarun be paid back the whole amount of deposit with accrued interest without any deduction? **(4 marks)** ***[CSPP P-1]***

Answer:

Rule 15 of the Companies (Acceptance of Deposits) Rules, 2014 provides that where a company makes a repayment of the deposits on the request of the depositor, after the expiry of 6 months but before the expiry of the period for which such deposits was accepted, the rate of interest payable on such deposit shall be reduced by the one percent from the rate which the company would have paid had the deposits been accepted for the period for which it has actually run and the company shall not pay interest at any rate higher than the rate so reduced.

(a) Since, Tarun is seeking a withdrawal of his Deposit after expiry of six months from the date of deposit, he is entitled to get an interest @ 1 less than the rate which the company would have paid had the deposits been accepted for the period for which it has actually run.

(b) The above provision will not apply where the company is forced to refund the deposits due to non-compliance with the provision of rule 3, which includes the limit of the brokerage to be paid as fixed by the Reserve Bank of India. As F Ltd has violated the maximum rate of brokerage fixed, the company has to return the deposits without any deduction in the interest rate of amount.

Space to write important points for revision

2019 - June [2] (c) Crown Limited during the course of statutory audit, found that Dinesh, their whole time director whose managerial remuneration was approved at ₹ 100 lakh per annum has drawn remuneration amounting to ₹ 125 lakh during the financial year 2018-19. Dinesh does not want to refund the excess remuneration drawn by him and the company is also keen to waive the recovery of the sum refundable by Dinesh. The company has defaulted in all the instalments of term loan recoverable by them during the year amounting to ₹ 50 lakh. Advise the company on the course of action.

(4 marks) ***[CSPP P-1]***

Answer:

Section 197(9) and (10) of the Companies Act, 2013, provides that where any director has received remuneration in excess of the limit prescribed under this section, he shall refund such sums to the company within two

years or such lesser period as may be allowed by the company. The company cannot waive the recovery of any such sum refundable unless approved by the company by special resolution within two years from the date the sum becomes refundable. Further where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of such bank or financial institution or the debenture holder or the secured creditor as the case may be, shall be obtained by the company before obtaining the company approval in the general meeting. Therefore, the Crown Ltd. has to take an approval from the lender to whom the loan instalments are due and thereafter also obtain the approval of the company in general meeting for such waiver.

Space to write important points for revision

2019 - June [3] (a) The Board of Directors of Fast Limited decided at their first Board meeting that every year, the board meeting shall be scheduled on the four dates, viz. 10th April, 10th July, 10th September and 10th January, with a view to enable the directors to plan their other activities. This was unanimously agreed to by all the directors and was recorded in the minutes of the meeting.

(i) Rahul, the Company Secretary of the Company took a position that no notice for the Board Meeting is required to be issued in view of the above arrangement agreed in the first board meeting. Is it tenable?

(ii) An item business not included in the agenda item was taken up by one of the directors. Can Rahul refuse to take it up for discussion?

(4 marks) ***[CSPP P-1]***

Answer:

(i) Section 173 of the Companies Act, 2013, which deals with board meetings and the requirement of notice to be given for a board meeting to be convened, is silent on the above situation. However, Secretarial Standards (SS-1). which deals with the best practices for a board meeting provides specifically under clause 1.3.5 that the notice of the meeting shall be given even if meetings are held on pre-determined dates or at pre-determined intervals. In view of the

above, Rahul cannot take a position that no notice for the board meeting is required in the instant case. A notice has to be issued for every meeting even though the dates of the meeting have been pre-determined and agreed to by all the directors.

(ii) Clause 1.3.10 of the SS-1 further provides that any item of business not included Thus, where majority of the directors including one independent director consent to the inclusion of the subject and the chairman has no objection, Rahul cannot the instant case. A notice has to be issued for every meeting even though the chairman and with the consent of a majority of the directors present in the dates of the meeting have been pre-determined and agreed to by all the directors. meeting, which shall include at least one independent director, if there is one. in the agenda may be taken up for a consideration with the permission of the Rahul cannot take a position that no notice for the board meeting is required in 11 PP-ACLP June 2019 refuse to take up the subject to discussion.

Space to write important points for revision

2019 - June [3] (b) You are appointed by Crook Limited to conduct Secretarial Audit for the year ended March, 2019. During the course of the audit, you encounter certain transactions that make you believe that an offence of fraud involving an amount of ₹ 2 crore has been committed in the company by its officers and employees. Explain the action required from your side to comply with the Act. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 143 of the Companies Act, 2013 read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that where an auditor in the course of an audit of a company has reason to believe that an offence of fraud, which involves or is expected to involve, individually an amount of ₹ 1 crore and above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government in the following steps:

(i) The auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of fraud, seeking their reply or observations within 45 days.

(ii) On receipt of such reply or observations, the auditor shall forward his report along with reply from the Board or the Audit Committee to the Central Government within 15 days from the date of receipt of such reply or observations.

(iii) In case, he fails to get any reply or observations as above, he shall forward his report to the Central Government along with a note containing details of his report that was forwarded to the Board or the Audit Committee. The report to Central Government shall be in the form of a statement as specified in e-form ADT-4.

As per Section 143(14)(b) of the Act. the above referred provisions of Section 143 apply mutatis mutandis to the cost audit conducted by a secretarial audit conducted by a company secretary.

Space to write important points for revision

2019 - June [3] (c) Growth Limited has designed an Employee Stock Option Scheme and has formed a trust for the purpose of executing the scheme. The Company seeks your advice on the conditions to be complied for providing necessary funds to the trust for purchasing the shares in the Company. Advise. **(4 marks)** ***[CSPP P-1]***

Answer:

Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014 provides for the following conditions to be complied with when a company wants to provide funds to the trust for purchasing the shares of the Company for the purpose of ESOP:

a. The scheme for the provision of money for purchase of or subscriptions of shares is approved by the members by passing a special resolution.

b. Such purchase of shares shall be made only through recognized stock exchange in case the shares are listed and not by way of private offers or arrangements.
c. Where shares of the company are not listed, the valuation at which shares are to be purchased shall be made by registered valuer.
d. The value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed 5% of the aggregate paid-up share capital and free reserves of the company.
e. The explanatory statement to be annexed to the notice of the meeting for passing special resolution shall contain particulars of the class of employees for whose benefits the scheme is being implemented and the particulars of the trustee or employees in whose favour such shares are to be registered.

Space to write important points for revision

2019 - June [3] (d) Modest Limited, a listed company with more than 5000 shareholders, wants to send the notice of the ensuing Annual General Meeting to all its shareholders by e-mail. Advise the Company on the compliance points to be addressed in this regard.

(4 marks) ***[CSPP P-1]***

Answer:

According to Rule 18 of the Companies (Management and Administration) Rules, 2014 the following are the conditions to be complied with when Modest Ltd wants to send the notice of the ensuing AGM to all its shareholders by email-

a. The email shall be addressed to the person entitled to receive such email as per the records of the company as provided by the depository.
b. The company shall provide an advance opportunity at least once in a financial year, to the member to register his email address and changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email ids are already registered.

c. The subject line in email shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled.
d. The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent as well as failed transmissions and subsequent resending shall be retained by the company as proof of sending.
e. If a member entitled to receive notice fails to provide or update relevant email address to the company or the depository participant, the company shall not be in default for not delivering the notice.
f. The notice shall be simultaneously placed on the website of the company and on the website as may be notified by the Central Government.
g. The company may send the email through in house facility or t s ere ands transfer agent or authorize any third party agency providing bilk email facility.

Space to write important points for revision

2019 - June [4] (a) An investigation has been ordered in respect of Liberty Limited and consequently, the Central Government has directed the company to preserve the books of accounts of the company for the past 12 years. Subsequently, based on an application form, the Central Government, NCLT has ordered that the books of accounts relating to past 12 years should be reopened to rectify certain anomalies. The Company contends that the reopening cannot be ordered in respect of years earlier than 8 years from the current financial year. Is it tenable? **(4 marks)** ***[CSPP P-1]***

Answer:

Section 128(5) of the Companies Act, 2013 stipulates that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year or where the company has been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of accounts shall be kept in good order. But where an investigation has been ordered in respect of the company, the Central Government may

direct that the books of accounts may be kept for such longer periods as it may deem fit.

Section 130 of the Companies Act, 2013 provides that company shall revise and restate their accounts based on an order made by a court of competent jurisdiction or NCLT and such order shall not be made in respect of re-opening of books of accounts relating to a period earlier than eight financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under section 128(5) for keeping of books of accounts for a period longer than 8 years, the books of accounts may be ordered to be revised or reopened within such longer period.

In the light of the above, Liberty Ltd. has no grounds to contend the order of the NCLT for revision of accounts for the past 12 years.

Space to write important points for revision

2019 - June [4] (a) M/s RST and Co., a firm of Chartered Accountants, comprising of three partners R, S and T are Statutory Auditors of 50 companies as per details given below:

(i) Small Companies — 10
(ii) Private Companies having paid-up share capital of less than ₹ 100 Crores — 20
(iii) Private Companies having paid-up share capital of more than ₹ 100 Crores – 15
(iv) Public Companies — 5

Mr. R signs the Balance Sheet of 10 Small Companies and 10 Private Companies having paid-up share capital of less than ₹ 100 Crores. Mr. S signs the Balance Sheet of 10 Private Companies having paid-up share capital of less than ₹ 100 Crores and 5 Private Companies having paid-up share capital of more than ₹ 100 Crores. Mr. T signs the Balance Sheet of 10 Private Companies having paid-up share capital of more than ₹ 100 Crores and 5 Public Companies.

What is the maximum number of audits that the firm as a whole can accept and what is the maximum number of audits each individual partner can accept? **(6 marks)** ***[CMA PAPER - 13]***

Answer:

Ceiling on Number of Audit: As per Section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty Companies other than one person companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

As per Section 141(3)(g), this limit of 20 Company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60 Company audits. Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 Company audits on his account. Therefore, maximum number of audits that the firm M/S. RST and CO. as a whole can accept is 60 and maximum number of audits each individual partner can accept is 20 i.e. other than one person Companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

In the given case, CAR is holding appointment in 20 Companies, i.e. 10 small companies and 10 private companies having paid up share capital of less than ₹ 100 crores, whereas CAS is having appointment in 15 companies i.e. 10 private companies having paid up share capital of less than ₹ 100 crore and 5 private companies having paid up share capital of more than ₹ 100 crore and CAT is having appointment in 5 public Companies and 10 private companies having paid up share capital of more than ₹ 100 crores. In aggregate all three partners are having 50 audits.

As per Section 141(3)(g) applying the above provisions, an auditor can accept more appointment as auditor = ceiling limit as per Section 141(3)(g) – already holding appointments as an auditor.

Hence (1) CA R can accept 20 more audits. (2) CA S can accept 20 – 5 = 15 more audits and (3) CA T can accept 20 – 1 5 = 5 more audits.

As per the facts of the case, M/S. RST and CO. is already having 20 company audits and they can also accept 40 more company audits. In addition, they can also conduct the audit of one person companies, small companies, dormant companies and private companies having paid up share capital less than ₹ 100 crores.

As per Section 141(3)(g) of the Companies Act, 2013, M/S. RST and CO. can accept appointment as an auditor of 40 more companies as under:

Total number of Audits available to the Firm	= 20 × 3 =	60
Number of Audits already taken by all the partners in their individual capacity	= 0 + 5 + 15 =	20
Remaining number of Audits available to the firm	=	40

2019 - June [4] (b) Lakshman has been appointed as the managing director of Lucky Limited (which does not have any other whole time directors) on the following terms and conditions:

(i) Remuneration amounting to 5% of the net profits of the company.

(ii) A fee of ₹ 5,00,000 per annum towards actuarial services, even though Lakshman does not hold any professional qualification in actuarial science.

(iii) Company has paid a premium of ₹ 7,00,000 towards Directors and Officers Liability policy to protect the Company against any negligence on the part of Lakshman.

(iv) Sitting fee of ₹ 25,000 for every meeting of the board or the Committee thereof attended by Lakshman.

The Company has defaulted in the repayment of interest and principal on term loans borrowed from banks, which default is still subsisting.

Suggest if the above package of remuneration contravenes any provision of the Act and the remedial action required from the company.

(4 marks) ***[CSPP P-1]***

Answer:

The overall limit on managerial remuneration indicated in section 197 of the Companies Act, 2013 read with Schedule V of the Act has the following further conditions:

a. The remuneration shall not include any fee for services rendered by such director in other capacity if the services are of professional nature and in the opinion of the Nomination and Remuneration committee or the Board of Directors, as the case may be, the director possesses the prescribed qualification for the practice of the profession.
b. Premium paid on insurance taken to indemnify the directors against any liability arising out of their negligence, default etc. is not included in the overall remuneration, provided the concerned director is not guilty.
c. Sitting fee for attending the meeting of the Board or a committee thereof, is not included in the overall remuneration.

Considering the above provisions the fee payable for actuarial services is to be added to Lakshman's remuneration as he does not possess professional qualification to practice actuarial science. In that case, the overall remuneration exceeds the limit of 5% of net profits as provided in the section. Therefore, the company has to get the approval of the shareholders by way of a special resolution in terms of Section 197. As the company has defaulted in payment of interest and principal on term loans to the banks, the company should also take a prior approval of the banks for paying the above remuneration to Lakshman, before passing the special resolution by shareholders.

Space to write important points for revision

2019 - June [4] (c) Young Limited, an unlisted public company was incorporated on 1st September 2018 with an authorized share capital of ₹ 1 crore. The Company has A and B as subscribers to the Memorandum of Association wherein each of them have undertaken to subscribe to 50,000 equity shares of the Company having a face value of ₹ 10 each. Now, it is found that no action has been taken by the Company to collect the share subscription amount from A and B. Advise the Company on the contravention, if any, committed by them and the consequences.

(4 marks) ***[CSPP P - 1]***

Answer:

Section 10 (2) of the Companies Act, 2013 provides that all monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

However Section 10 A of the Companies Act, 2013 inserted by Companies (Amendment) Ordinance, 2018 (effective from 02.11.2018), provides that:

"A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless–

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

Since, Section 10A is applicable to the Company incorporated on or after 02nd November, 2018. In the instant case, the company is incorporated on 1st September, 2018, Section 10A is not applicable. Hence company is not in contravention of any provision of the Act.

Space to write important points for revision

2019 - June [4] (c) (ii) Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:

(I) A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.

(II) An employee of the company publicized among his social networking of sound financial position of his organization in order to incite the public to purchase the shares of its company. In actuality, the company was running in loss. **(4 marks)** ***[CMA PAPER - 13]***

Answer:

Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affaire of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false,- he shall be punishable for fraud in the manner as provided in Section 447.

As per the above provision:

(i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.

(ii) Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather-fully relying on the publicity made on social networking.

Space to write important points for revision

2019 - June [5] (b) Efficient Ltd. an unlisted public company, having a paid up share capital of ₹ 50 crore held by 150 shareholders in physical form, proposes to issue secured debentures for an amount of ₹ 25 crore. The Company needs an advice as to whether the issue of secured debentures

has to be in a dematerialized format and further if the existing equity shares of the company also needs to be dematerialized. **(4 marks)** ***[CSPP P-1]***

Answer:

As per the Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014. every unlisted public company with effect from 2nd October 2018, shall issue securities only in dematerialised form and also facilitate dematerialization of all its existing securities in accordance with the provisions of the Depositories Act, 1996 and the regulations made there under. They shall further ensure that before making any fresh issue of securities, the entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised. Every holder of securities of an unlisted public company who intends to transfer such securities on or after 2nd October 2018, shall get such securities dematerialised before such transfer. Further. every holder who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus or rights offer) on or after 2nd October 2018 shall ensure that all his existing securities are held in dematerialized before such subscription.

In the light of the above referred provisions, it is mandatory for the company to issue the secured debentures in dematerialised form only and also to ensure that all the existing securities already issued by the company are also converted to dematerialised form.

Space to write important points for revision

2019 - June [5] (c) Beta Limited, a listed company, had built its bank borrowings to over ₹ 25 Crore over the past 5 years and there have been multiple defaults in payment of interest and principal amount. The Company has accumulated significant amount of losses. The consortium of bankers, on 1st April 2019, have therefore mooted a debt restructuring plan in accordance with the guidelines issued by the Reserve Bank of India, which requires a conversion of the total debt into equity shares of the Company to be made at a discount of 10% on the face value of the equity shares. However, the company argues that Section 53 of the Act prohibits any issue of shares at a discount. Can Beta Ltd. succeed in its argument?

(4 marks) ***[CSPP P-1]***

Answer:

Section 53 of the Companies Act. 2013 stipulates that a company shall not issue shares a discount, except when an issue of sweat equity shares is made in compliance with section 54 of the Act. Any such issue of shares by a company at a discount shall be void.

Section 53(2A) however provides an exception to a company when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the RBI Act or the Banking (Regulation) Act, 1949.

In view of the above, as there is a proposal from Beta Ltd's bankers for a conversion of total debt into equity shares of the company at a discount of 10% on the face value of such shares, the company can issue shares at a discount provided the conversion is in pursuance of a debt restructuring plan in accordance with the guidelines issued by the RBI. Accordingly, the company cannot sustain argument of prohibition under section 53 in view of the provision under section 53(2A) which exempts the above transaction.

2019 - June [5] (d) X & Co. was incorporated in March 2018 as a One Person Company. During the financial year ending March 2019, the Company achieved a turnover of ₹ 5 Crore. Advise the Company as to whether there is any contravention of the provisions of the Act and if so, the remedial action required. **(4 marks)** ***[CSPP P - 1]***

Answer:

As per Rule 3(7) of the Companies (Incorporation) Rules, 2014, no one person company (OPC) can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of one person company, except when threshold limit (paid-up share capital) is increased beyond ₹ 50 lakhs or its average annual turnover during the relevant period exceeds ₹ 2 crores.

In terms of Rule 6 of the said Rules, where the average annual turnover of the company exceeds ₹ 2 crores, it shall cease to be entitled to continue as One Person Company. Such one person company shall within a period of 60 days from the date of applicability, give a notice to the Registrar in e-form INC-5 informing that it has ceased to be a one person company and

that it is now required to convert itself into either a private company or a public company by virtue of its average annual turnover having exceeded the threshold limit.

Such one person company shall be required to convert itself. within six months from the last date of the relevant period during which its average annual turnover exceeds ₹ 2 crores, into either a private company with minimum of two members and two directors or a public company with at least seven members and three directors.

Rule 7A provides that where a one person company or any officer of such company contravenes any of the provisions of these rules, the one person company or any officer of such company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues.

Accordingly, in terms of Rule 6 of the Companies (Incorporation) Rules, 2014, X & Co. OPC, needs to convert itself into a Private company or a Public company within a period of 6 months from the end of the Financial Year ended 31st March. 2019, failing which it shall be liable for penalty under Rule 7A of the said Rules.

Space to write important points for revision

2019 - June [6] (b) Mahesh holds 75% of the equity share capital in Maximum Ltd. Infra Limited is an unlisted company in which Maximum Ltd. holds 15% equity stake. Explain the compliance requirements, if any, under the Companies (Significant Beneficial Owners) Rules 2018.

(4 marks) ***[CSPP P-1]***

Answer:

Accordingly to Explanation I (i) to Rule 2(1)(e) of the Companies (Significant Beneficial Owner) Rules 2018, where the member is a company, the significant beneficial owner is the natural person, who. whether acting alone

or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. share capital of the company or who exercises significant influence or control in the company through other means.

Every significant beneficial owner shall file a declaration in Form No. BEN-I to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership. [Rule 3]

Where any declaration under rule 3 is received by the company, it shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fees as prescribed in companies (Registration offices and fees) Rules, 2014. [Rule 4] T

he company shall maintain a register of significant beneficial owners in Form No. BEN-3. [Rule 5]

Alternate Answer

In terms of Explanation III (i)(a) Rule 2(h) of the Companies (Significant Beneficial Owners) Amendment Rules 2019, Mahesh. being a majority stake holder in Maximum Ltd, which in turn holds, 15% equity stake of Infra Ltd. shall be considered to be SBO for the shares of Infra Ltd held by Maximum Ltd. Therefore, Infra Ltd, being the reporting company has to comply with the following —

a. In terms of Rule 2A(1) of the Companies (Significant Beneficial Owner) Amendment Rules 2019, Infra Ltd should take necessary steps to identify, if there is any individual who is a Significant Beneficial Owner as defined u/s. 90(1) of the Act and cause him to file declaration in form BEN-1.
b. Further in terms of Rule 2A of the said Rules, Infra Ltd shall give notice in form BEN-4 to all its members (other than individuals) including Maximum Ltd who hold more than 10% equity stake, seeking information

about the SBO and to every such person who, in the view of Infra Ltd is the SBO or has the information about the SBO.

c. If Infra Ltd doesn't receives any response to the form BEN-4 sent to Maximum Ltd and any other non-individual member holding 10% or more equity stake, within the stipulated time or the information is insufficient, then Infra Ltd shall apply to the NCLT under Rule 7 of the said Rules to direct that restrictions shall apply in dealing with those shares.

d. If Infra Ltd does receives within the prescribed period. form BEN-1 from Mahesh, should within 30 days of receipt of such BEN-1 file a return of Significant Beneficial Owner in form BEN-2 to the Registrar. The company should maintain register of Significant Beneficial Owners in form BEN-3.

Space to write important points for revision

2019 - June [6] (c) Rocking Infra Limited, a company engaged in the business of BOOT contracts of national highways is looking at raising funds for future projects by issue of redeemable preference shares. The Contract bid by the company generally yield flow back of funds over a period of 25 to 30 years and hence is looking at extended maturity period of 30 years. Is it feasible? Further, the company, keeping in mind the funds generation in long-term infra projects, also wants to ensure that there are alternative solutions like roll-over, in case the company is forced to face a default in redeeming such preference shares. Advise. **(4 marks)** ***[CSPP P-1]***

Answer:

Section 55 of the Act provides that a company limited by shares may, if authorize by its articles, issue preference shares which are liable to be redeemed within a period not exceeding 20 years from the date of their issue subject to such conditions as may be prescribed. However, a company engaged in the setting up and dealing with infrastructure projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum of ten percentage of such preference shares per year from the 21st Year onwards or earlier on proportionate basis, at the option of the preference shareholders. Thus, Rocking Infra Ltd being engaged in Infrastructure projects, can issue

redeemable preference shares for a period between 20 years to 30 years, subject to the compliance with the provisions of Section 55.

The section also provides for roll-over of the preference shares. Where a company is not in a position to redeem any preference shares to pay dividend, if any, on such shares in accordance with the terms of the issue, it may with the consent of the holders of three fourths in value of such preference shares and with the approval of NCLT on a petition made 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 shares, the unredeemed preference shares shall be deemed to have been redeemed. NCLT shall order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares, in the above case.

Space to write important points for revision

2019 - June [2] (a) Discuss:

(i) Whether the Companies Act, 2013 bars filing of a joint application for compounding of offence by a defaulting company along with its officers in default?

(ii) Whether the Companies Act, 2013 bars filing of a joint application for compounding of the same offence committed in different years?

(iii) Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'imprisonment or fine', if repeated within a period of three years results into a mandatory imprisonment for the defaulters and whether the same can be compounded or not?

(6 marks)

Answer:

(i) The Companies Act, 2013 does not provides for any bar on filing of joint application for compounding of offence by a defaulting company along with its officers in default.

Section 441(1) of the Companies Act, 2013 provides that any offence punishable under this Act whether committed by a company or any officer thereof not being an offence punishable with imprisonment only,

or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government.

(ii) In terms of the scheme envisaged section 441 of the Companies Act, 2013, there is no bar on preferring a single application for compounding the same offence committed during different financial years by the company and its officers, nor there do any bar on a joint application being made by a company along with its officers in default. Procedures are deemed to be permitted unless expressly prohibited. (Rajendra Prasad Gupta vs. Prakash Chandra Mishra and Ors. AIR 2011 SC 1137).

In absence of any specific bar of joinder of parties or joining of separate cause of actions in preferring a compounding application, joining of parties for same offence is permitted. Facts leading to any non-compliance under the Act on part of the company and its officers in default will be same, any suggestion to the contrary will only lead to multiplication of proceedings and different findings, which is not desirable.

(iii) Section 451 of the Companies Act 2013 provides that if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

However, according to section 441(6) of the Companies Act, 2013 any offence which is punishable with imprisonment only or with imprisonment and also with fine are not compoundable, but any offence which is punishable with imprisonment or fine, or with imprisonment or fine or with both, are compoundable.

Space to write important points for revision

2019 - June [2] (b) The legal principle is that coercive recovery proceedings cannot be initiated against a sick company.

Manmohan and Raj Kumar were guarantors to the loan obtained by a sick company. Recovery proceedings against them were initiated before the Debt Recovery Tribunal (DRT). They contended that recovery proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are to be treated as a suit and if the principal borrower is declared as a sick company, proceedings cannot lie or be continued against the guarantors. Will they succeed in getting protection under section 22A of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)? Give reasons in support of your answer. **(6 marks)**

Answer:

Supreme Court in the matter of KSL & Industries Ltd. v. Arkhangelsk Threads Ltd. & Others (2015) held that provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) will prevail over section 34 of the Debts Due to Banks and Financial Institutions Act, 1993 and had reiterated the legal principle that coercive recovery proceedings could not be initiated against a sick company.

The problem is based on the decision of Division Bench of Delhi High Court in the case of Om Prakash Parasrampuria & Others v. Union of India & Others decided on 3.3. 2016.

The Delhi High Court had in the instant case held that the word 'suit 'cannot be understood in its broad and generic sense to include any action before a legal forum involving an adjudicatory process. If that were so, the legislature would have made the necessary provisions in section 22 of the SICA.

The term 'suit' would therefore apply to proceedings in a Civil Court and not actions for recovery proceedings filed by the banks and financial institutions before a Tribunal such as the Debt Recovery Tribunal (DRT).

The proceedings against Manmohan and Raj kumar can continue.

Space to write important points for revision

2019 - Dec [2] (a) ABC Limited is an unlisted public company, is part of ABC group of companies with its business ranging from paper to pharmaceutical

manufacturing. The Company's Pharmaceutical manufacturing division was under scanner of US Foods and Drug Administration (USFDA) and there were pending investigations against the said unit. As a part of its corporate restructuring, the Board of ABC Limited has decided to demerge its pharmaceutical manufacturing business to a new Company and merge another paper manufacturing Company with ABC Limited.

A Composite scheme of amalgamation was filed under section 230 of the Companies Act, 2013 read with the rules thereunder. The National company Law Tribunal (NCLT) rejected the Company's application on the ground that investigations are pending against the demerged unit.

It the ground for rejection by NCLT justified? **(6 marks)**

Answer:

The ground of rejection by NCLT is not justified.

The present case is similar to the Case of ***Mel Windmills Pvt. Ltd. v. Mineral Enterprises Limited & Anr [NCLAT] Company Appeal (AT) No. 04 of 2019 [Decided on 27/05/2019]*** wherein the NCLT Bengaluru Bench declined to sanction the scheme of demerger on the ground that several issues were pending finalization and certain investigations were pending in relation to the business of the demerged company.

Reference Section: Section 230 of the Companies Act, 2013

Section 230(1) states that the Tribunal may, on the application of the company, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

As per Section 230 (2), the company or any other person, by whom an application is made under section 230(1), shall disclose to the Tribunal by affidavit all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company.

Thus, the Tribunal should have first ordered a meeting of creditors /members and if consent has been accorded in such meeting of creditors/members, then it can go into the merits of proposed scheme of demerger.

Space to write important points for revision

2019 - Dec [2] (b) An appeal was filed by X, a minority shareholder against M/s XYZ & Sons Limited alleging oppression and mismanagement by majority shareholders. As per the shareholding pattern, X and another shareholder held less than 10% and the rest by shareholders who individually held more than 10%. The National Company Law Tribunal passed an Order, granting waiver in favour of X under proviso to Section 244(1) of the Companies Act, 2013 for the petition alleging oppression and mismanagement in the Company. An appeal was preferred against the said Order by M/s XYZ & Sons Limited.

Evaluate the validity of the appeal in the background of decided case law, if any. **(6 marks)**

Answer:

The validity of the appeal can be seen with the decision of Appellate Tribunal in ***Cyrus Investment Pvt. Ltd. & Anr. Versus Tata Sons Ltd. & Ors., 2017 SCC OnLine NCLAT 261***. In the said case the Appellate Tribunal held that while considering the application for waiver under Proviso to Sub-section (1) of Section 244 of the Companies Act, 2013, the Tribunal may look into the proposed petition under Section 241 and 242 but cannot take into consideration the merit of the said petition to decide the application for waiver. It is only in application where cases of exceptional circumstances is made out by one of the member having less than 10% of shareholding, the Tribunal may allow petition for waiver.

Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) of Section 244:

(i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright, otherwise the Tribunal will look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of

proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241, etc.

Accordingly, if the X is able to make out some exceptional case for waiver of requirements of the minimum shareholding, the company may not be able to sustain the appeal before NCLAT.

Space to write important points for revision

2021 - Aug [2] (a) Pentagon Medical Marketing India Private Limited was incorporated in December 2006. The Company was profitable initially, however in few years there were internal issues and the Board decided to apply for Striking off with Registrar of Companies (ROC). An application was made for striking off its name under the Fast Track Exit Scheme, 2011, which was processed by ROC, Ahmedabad. The ROC sent a notice to the Company and Income-tax authorities seeking objections, if any within a stipulated period. Later, ROC struck off the name of the Company, as no objections were received by it within the stipulated period. Later, on the Income-Tax Authorities filed an appeal to the NCLT seeking restoration of the name of the company on the ground that the tax dues against the company were not determined. Comment briefly in background of decided case law(s). **(6 marks)**

Answer:

The facts in the given case are similar to the case of PR. Commissioner of Income Tax, Delhi vs. Registrar of Companies, Delhi & Ors. [NCLAT].

In the instant case, the Report-cum-Affidavit filed by ROC and supported by Annexures - I and II satisfactorily establishes that the procedure laid down for striking off the name of Company from Register of Companies (ROC) has

been observed in letter and spirit. In the face of the material on record corroborated by contemporary record, no exception can be taken as regards compliance of the procedural aspect laid down in the Guidelines governing FTE of the Company.

Although, in terms of the Guidelines, decision of the ROC in respect of striking off the name of Company from its Register is final, it is open to this Appellate Tribunal to examine whether the fundamental principles of jurisprudence have been observed in compliance. Whether the Company resorted to FTE with malafide intention of defrauding the Creditors would be a consideration having a bearing on the application of FTE Guidelines for defunct companies but before dwelling upon the question of Revenue being a Creditor qua the Company on the material date, it would be of primary importance to find whether the Company was 'defunct company' within the meaning of FTE Guidelines. Nil asset and liability was a sine-qua-non for a company to fall within the ambit of a 'defunct company'.

It was therefore incumbent upon the Revenue, in the first instance to lay proof before the Tribunal or even before this Appellate Tribunal that the Company was possessed of assets besides having liabilities. Unfortunately, the Revenue has not even made any feeble attempt at disclosing any details of the assets, movable and immovable, that the Company possessed and liability, if any, on the material date. Liability to pay Income Tax would necessarily depend on assets besides trade and business activity culminating in profit or loss. The proof in regard to possession of assets by the Company and owing of any liabilities by it as also in regard to factum of any income from legitimate sources assessable to Income Tax being abysmally absent, no fault can be found in regard to striking off the Company by ROC under FTE which has been duly notified in the 'Gazette of India'.

Striking off the name of Company which was a Private Company, from the Register of Companies, indisputably does not absolve its erstwhile Directors who are liable as provided under Section 179 of the Income Tax Act, 1961 to pay the amount of Tax leviable in respect of income of any previous year. Why, in presence of such mechanism within the legal framework available to Revenue, insistence is on restoration of Company without laying any proof of its being possessed of any assets and liabilities

and without any evidence of the Company being in operation, is a question that can be best answered, though has not been answered by the Revenue.

The appeal is dismissed leaving the Revenue to pursue appropriate legal remedy in the light of observations in this judgment.

Space to write important points for revision

2021 - Aug [2] (b) CO2 Technologies Limited provides various fintech and software innovation solutions. The Company was engaged by Energy Infra Exchange Limited, an exchange for carbon credits in India. The founder and chairman of CO2 Technologies Limited, Ziruch was convicted of fraud. Upon investigation, it was found that the fraud committed by Ziruch perpetrated through multiple layers impacting both the Company and Energy Infra Exchange Limited. Taking into consideration the provisions of the Companies Act, the Government of India ordered compulsory amalgamation of the CO2 Technologies Limited and Energy Infra Exchange Limited. Evaluate in background decided case law(s). **(6 marks)**

Answer:

The facts of the present case is similar to the case of 63, Moons Technologies Ltd [formerly Financial Technologies (India) Ltd. v. Union of India & Ors (Bombay High Court)].

There is adequate material on record on basis of which the Central Government has subjectively satisfied itself that the amalgamation is essential in public interest to facilitate recoveries of dues from defaulters from pooling human and financial resources of Financial Technology India Limited (FTIL) and National Spot Exchange Limited (NSEL). Despite claims by NSEL that it has the means to and it has been rigorously pursuing recoveries, the fact remains that the position of recoveries is not very promising and may further deteriorate if only NSEL has to fend for itself. In such matters, it is not sufficient that some decrees or attachment orders are obtained. This is also not an issue of mere recoveries but this is an issue of investor confidence in the very functioning of stock and commodity exchanges.

If the Central Government, were not to act in a situation of this nature, investor confidence would certainly be a casualty. Such a situation then, has a cascading effect, which is by no means conducive to the national economy.

The Central Government, in making the order has balanced the interests of the two companies, its shareholders, creditors and employees on one hand and the interests, not only of the investors who may have claims, but also, of the investing public, which is required to be given the confidence that the Central Government will act to see that a holding company does not take shelter behind its wholly owned subsidiary and thereby shirk responsibility in the wake of such an unprecedented payment crisis. The three grounds or reasons stated in the impugned order, in our opinion, were sufficient to arrive at the subjective satisfaction that it was essential in public interest to order the amalgamation of the two companies. This is not a case of exercise of powers for any extraneous considerations or alien purposes.

Space to write important points for revision

2021 - Dec [2] (a) Lala Karori Mal held 5,35,30,960 equity shares of face value of ₹ 10 each in Sarvodya Agrotech Ltd., a listed company. The holding amounted to 39.88% of the company. The present market value of the share is ₹ 368/- per share. He died on 29.03.2020 without filing any nomination. However, he executed a will 3 months prior to his death in favour of Mrs. Jamuna Devi, his wife. Two witnesses duly attested the will in the prescribed manner and same was registered with the Registrar. The shares were held in dematerialization form with Karvy Stock Broker (Depository Participant). Due to violation of various laws, rules and regulations, SEBI banned the depository participant and instructed it to transfer the shares with new Depository Participant within 3 months. Accordingly, Karvy as well as CDSL (Depository) sent the Notice through email as well as courier to all investors. Sampat Kumar, son of late Lala Karori Mal, filed a partition suit in High Court claiming, entitlement to one-fourth of the estate of his father including the deceased's shareholdings in the said company. The High Court passed an interim order maintaining *status quo* concerning shares and other immoveable property.

While the suit was pending in the High Court, Sampat Kumar filed Company Petition alleging oppression and mismanagement under sections 241 and 242 of the Companies Act, 2013 against his mother and others. He claimed eligibility to maintain the petition on the ground of being a holder of 0.03% shareholding and claiming entitlement and legitimate expectation to 9.97% shareholding of Sarvodya Agrotech Ltd. by virtue of his being the son of deceased Lala Karori Mal. Mrs. Jamuna Devi challenged the maintainability of the petition on the ground that Sampat Kumar was not the holder of the required number of shares to file the petition.

Question:

Whether the dispute raised as to the inheritance of the estate of the deceased is a civil dispute or could it be said to be an act of oppression and mismanagement in the affairs of the Company?

Whether such a dispute could be adjudicated in a company petition filed during the pendency of the civil suit? **(6 marks)**

Answer:

The given case is similar to the case of Aruna Oswal vs. Pankaj Oswal & Ors. Civil Appeal No. 9340 of 2019 with connected appeals judgement dated 06/07/2020. In this case Supreme Court observed that respondent as pleaded by him, had nothing to do with the affairs of the company and he is not a registered owner. The rights in estate/ shares, if any, of respondent no.1 are protected in the civil suit. Thus, Supreme Court satisfied that respondent does not represent the body of shareholders holding requisite percentage of shares in the company, necessary in order to maintain such a petition.

It is also not disputed that the High Court in the pending civil suit passed an order maintaining the status quo concerning shareholding and other properties. Because of the status quo order, shares have to be held in the name of Mrs. Jamuna Devi until the suit is finally decided. It would not be appropriate, given the order passed by the civil Court to treat the shareholding in the name of Respondent by NCLT before ownership rights are finally decided in the civil suit, and propriety also demands it. The question of right, title, and interest is essentially adjudication of civil rights between the parties, as to the effect of the nomination decision in a civil suit

is going to govern the parties' rights. It would not be appropriate to entertain these parallel proceedings and give waiver as claimed **under section 244 of the Companies Act, 2013** (the Act)before the civil suit's decision. Respondent had himself chosen to avail the remedy of civil suit, as such filing of an application under sections 241 and 242 the Act after that is nothing but an afterthought.

Supreme Court refrain to decide the question finally in these proceedings concerning the effect of nomination, as it being a civil dispute, cannot be decided in these proceedings and the decision may jeopardise parties' rights and interest in the civil suit. With regard to the dispute as to right, title, and interest in the securities, the finding of the civil Court is going to be final and conclusive and binding on parties. The decision of such a question has to be eschewed in instant proceedings. It would not be appropriate, in the facts and circumstances of the case, to grant a waiver to the respondent of the requirement under the proviso to section 244 of the Act, as ordered by the NCLAT. It *prima facie* does not appear to be a case of oppression and mismanagement. Our attention was drawn by the learned senior counsel appearing for Respondent to certain company transactions. From transactions simpliciter, it cannot be inferred that it is a case of oppression and mismanagement. We are of the opinion that the proceedings before the NCLT filed under sections 241 and 242 of the Act should not be entertained because of the pending civil dispute and considering the minuscule extent of holding of 0.03%, that too, acquired after filing a civil suit in company securities, of respondent no. 1. In the facts and circumstances of the instant case, in order to maintain the proceedings, the respondent should have waited for the decision of the right, title and interest, in the civil suit concerning shares in question. The entitlement of respondent No.1 is under a cloud of pending civil dispute. We deem it appropriate to direct the dropping of the proceedings filed before the NCLT regarding oppression and mismanagement under sections 241 and 242 of the Act with the liberty to file afresh, on all the questions, in case of necessity, if the suit is decreed in favour of respondent No.1 and shareholding of Respondent increases to the extent of 10% required under section 244 of the Act.

Supreme Court has reiterated that we have left all the questions to be decided in the pending civil suit. Impugned orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed to the aforesaid extent. Supreme Court request that the civil suit be decided as expeditiously as possible, subject to cooperation by Respondent Parties to bear their costs as incurred.

Space to write important points for revision

2021 - Dec [2] (b) Hari Vinayak was the Director (Finance) of Engineers Techno India Limited, a BSE Listed Company. After completing 4 years in the company, he resigned from the post of Director (Finance) w.e.f. 20.12.2020 citing some personal reasons. His resignation was accepted in the ensuing meeting of Board of directors held on 20.01.2021. Form DIR 12 was also filed in Registrar of Companies.

Godawari Construction Pvt. Ltd. filed a complaint against Hari Vinayak. It was alleged that the accused had issued cheques dated 15.02.2021 and 28.02.2021, which were dishonoured upon presentation. There was, however, no allegation that the cheques were post-dated. Accordingly, summons were issued against Hari Vinayak. On the other hand, Hari Vinayak preferred a miscellaneous writ petition for quashing the same. He took the defence that he had already resigned from the Company on 20.12.2020, which was accepted by the Board of directors on 20.01.2021. The High Court dismissed the petition without considering his contention that he had resigned from the Director of the company, prior to the issuance of the cheques.

Hari Vinayak then preferred a fresh application under section 482 Cr.P.C. to quash the summons. It was dismissed by the High Court opining that since the earlier miscellaneous application for the same relief had already been dismissed, the second application was not maintainable.

Hari Vinayak intends to file a special leave petition against the order of the High Court. Will he succeed? Give reasons in support of your answer and refer to case law, if any. **(6 marks)**

Answer:

The case given in question is similar to a case decided by Supreme Court in *Anil Khadkiwala vs. The State Govt. of NCT of Delhi.*

Facts of the case *Anil Khadkiwala vs.The State Govt. of NCT* of Delhi are that the application preferred by the appellant under Section 482 of the Code of Criminal Procedure, 1973 to quash the summons issued in complaint case no.3403/1/2015 was dismissed by the High Court opining that since the earlier Crl. M.C. No.877 of 2005 for the same relief had already been dismissed, the second application was not maintainable. Respondent no.2 filed a complaint against the appellant who was the Director of M/s. ETI Projects Ltd., the Company in question. It was alleged that the accused person had issued cheques dated 15.02.2001 and 28.02.2001, which were dishonoured upon presentation. The appellant had preferred Crl.M.P. No.1459 of 2005 for quashing the same. He took the defence, without any proof that he had already resigned from the Company on 20.12.2000, which was accepted by the Board of Directors on 20.01.2001. The application was dismissed on 18.09.2007 after noticing the plea of resignation, solely on the ground that the cheques were issued under the signature of the appellant. The appellant then preferred a fresh application under Section 482 giving rise to the present proceedings. The High Court noticing the reliance on Form 32 issued by the Registrar of Companies, under the Companies Act, 1956, in proof of resignation by the appellant prior to the issuance of the cheques, issued notice, leading to the impugned order of dismissal subsequently.

In the above case, Hon'ble Supreme Court allowed the Petition. Learned counsel for the appellant submitted that there was no bar to the maintainability of a second application under Section 482 of the Code of Criminal Procedure, 1973 in the peculiar facts and circumstances of the case, relying on Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Ors., AIR 1975 SC 1002. Learned counsel for respondent no.2 relied upon order dated 06.05.2019 of this Court in *Atul*

Shukla vs. The State of Madhya Pradesh and another (Criminal Appeal No.837 of 2019) to contend that such an application was not maintainable. The cheques being post-dated, the appellant cannot escape its answerability.

We have considered the respective submissions on behalf of the parties and are of the opinion that the appeal deserves to be allowed for the reasons enumerated hereinafter.

The complaint filed by respondent no.2 alleges issuance of the cheques by the appellant as Director on 15.02.2001 and 28.02.2001. The appellant in his reply dated 31.08.2001, to the statutory notice, had denied answerability in view of his resignation on 20.01.2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482 of the Code of Criminal Procedure, 1973 that he had resigned from the Company on 20.01.2001 and it had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued to the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques. The High Court in the fresh application under Section 482 of the Code of Criminal Procedure, 1973, initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.

Company, of which the appellant was a Director, is a party respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.

The impugned order of the High Court is set aside. The appeal is allowed and the proceeding.

In view of the above mentioned case, Hari Vinayak may succeed in a special leave petition against the order of the High Court.

Space to write important points for revision

2021 - Dec [5] (a) A company XYZ Ltd. had been mis-reporting its financial statements since more than 10 years which none of the stakeholders noticed for years. When the situation of the Company went from bad to worse and it had no option but to declare it bankrupt, the company issued a press statement that there is a disparity between actual and reported results due to accounting errors.

The first question from shareholders of the Company was as to why the auditors had not spotted and corrected the fundamental accounting errors? The auditors of the Company (one of the largest audit firms in the country) had compromised its independence by charging a huge audit fee and also consultancy income worth several times the audit fee. It had knowingly signed off inaccurate accounts in order to protect the management of the Company. The investigation also found a number of significant internal control deficiencies, external reporting processes, and a disregard of the relevant accounting standards.

Based on the above facts, answer the following:

(i) Does the case highlight importance of independence of auditors? Explain provisions under the Companies Act, 2013 which promote independence and rotation of auditors.

(ii) NFRA constituted under the Companies Act, 2013 has been vested with powers for action against the auditors. Explain powers and functions of NFRA. **(3 + 3 = 6 marks)**

Answer:

(i) Yes, the given case definitely brings out the importance of independence of auditors which has been re-iterated at various places and through various provisions in the Companies Act, 2013. If the Auditors had exercised independent judgement and not under the influence of the client they would have performed their duties diligently

as was expected of them rather than signing inaccurate financial statements.

Certain Provisions of Companies Act, 2013 which promote independence of Auditors are discussed below:

1. **Eligibility for appointment as Auditor:** Section 141 of the Companies Act 2013 provides that the following cannot be appointed as Auditors –
    1. a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
    2. an officer or employee of the company;
    3. a person who is a partner, or who is in the employment, of an officer or employee of the company;
    4. a person who, or his relative or partner—
        (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
        Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;
        (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
        (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;
    5. a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

6. a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
7. a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
8. a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
9. any person whose subsidiary or associate company or any other form of entity is engaged as on the date of appointment in consulting and specialized services as provided in Section 144 (auditors not to render certain services).

2. **Rendering of Non:** Audit Services by Auditors: The rendering of following services by Auditor of the Company are prohibited under Section 144:
   (i) accounting and book keeping services;
   (ii) internal audit;
   (iii) design and implementation of any financial information system;
   (iv) actuarial services;
   (v) investment advisory services;
   (vi) investment banking services;
   (vii) rendering of outsourced financial services;
   (viii) management services; and
   (ix) any other kind of services as may be prescribed.
3. **Oversight of Auditors:** To ensure independence and effectiveness of statutory auditors, the audit committee is required to review and monitor the auditor's independence, the audit scope and process, and performance of the audit team and accordingly recommend appointment, remuneration and terms of appointment of auditors of the company.

4. **Appointment and Mandatory presence of Auditors at general meetings of the Company:** In terms of Section 139, the appointment of auditors is done by the members of the Company who are independent of its management. This ensures that the selection of Auditors is done in an impartial manner. Further, the Auditors are mandatorily required to attend all general meetings of the Company which enables the shareholders to raise queries to the auditors concerning the accounts of the Company.
5. **Duty to Report about Fraud:** Section 143(12) imposes duty on the auditors by prescribing that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government and in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases.
6. **Mandatory Rotation of Auditors:** Companies Act, 2013 for the first time introduced the concept of mandatory rotation of auditors. Section 139(2) read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that no listed company or a company belonging to the following classes of companies excluding one person companies and small companies:
   (a) all unlisted public companies having paid up share capital of rupees 10 crore or more;
   (b) all private limited companies having paid up share capital of rupees 50 crore or more;
   (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crore or more shall appoint or re-appoint –

⇒ An individual as auditor for more than one term of five consecutive years; and

⇒ an audit firm as auditor for more than two terms of five consecutive years

Also, an individual auditor who has completed his term of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term. An audit firm which has completed two terms of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term. Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

(ii) The National Financial Reporting Authority (NFRA) is an independent regulator established **under Section 132 of the Companies Act, 2013** to oversee the auditing profession. It is similar to the Public Company Accounting Oversight Body set by in the USA by the Sarbanes Oxley Act 2002. NFRA has the investigative and disciplinary powers.

NFRA can:

(1) Investigate either *suo moto* or on the reference made to it by Central Government into the matters of professional or other misconduct, committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

(2) Impose penalties of not less than 1 lakh which may extend to five times of the fees received, in case of individuals professionals and of not less than 10 lakhs which may extend to ten times of the fees received, in case of professional firms; if the misconduct is proved.

(3) Debarring the member or the firm from engaging himself or itself from practice as the member of the Institute of Chartered Accountant of India for a minimum period of six months which may

extend to a period of 10 years. INFRA has also been vested with the same powers as are vested in civil courts under the Code of Civil Procedure, 1908 while trying a suit, relating to:

- discovery and production of books of account and other documents, as may be specified by the National Financial Reporting Authority;
- summoning, enforcing the attendance of persons and examination them on oath;
- issuing commissions for the examination of witnesses or documents;
- inspection of any books, registers and other documents of any person to whom NFRA has summoned, enforced the attendance and examined on oath;

It is also mentioned in **section 132 of the Companies Act, 2013** that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation under this section. However, any person aggrieved by any order of the NFRA may appeal before the Appellate Authority constituted for this purpose.

Space to write important points for revision

2021 - Dec [6] (a) Paras Pharma Ltd. had accepted deposits since 2002 and regularly paid maturity amounts till 28.02.2013. In 2013, the company started facing liquidity problems and incurred losses.

The company filed application before the Company Law Board and obtained relief under section 58 AA read with section 58A (9) of the erstwhile Companies Act, 1956 and get instalments fixed to repay deposits.

Whether the said company, which has already got relaxation from CLB under Section 58AA read with Section 58A (9) the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, can again apply for re-fixing of periods, instalments and rate of interest for repayment of deposits accepted before commencement of the Companies Act, 2013.

Give reasons in support of your answer. **(6 marks)**

Answer:

The facts of the given case are similar to the case of M/s Ind-Swift Limited (Appellant) vs. Registrar of Companies (Punjab & Chandigarh) (Respondent). In this case NCLAT observed that the NCLT considered that the Appellant had at the time of first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the Company, further extension was not justified.

Section 76(2) read with Sections 73 and 74 of the Companies Act, 2013 would apply to acceptance of deposits from public by eligible Companies but it saves the Company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and Rules there under and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of **Section 74 of the Companies Act, 2013** shall be deemed to have been complied with. This is, however, subject to the fact that the Company complies with the requirements under the Companies Act, 2013 and the Rules and continues to repay such deposits and interest due thereon on due dates for the remaining period" as per the terms and conditions.

Considering these provisions, it appears that **Section 74(1)(b) the Companies Act, 2013** was attracted and when it appears from record that the Appellant defaulted, the penal provisions would get attracted.

Hence, when once a scheme had been got settled, from Company Law Board, default on the part of the Appellant would attract penal provisions as the earlier scheme itself laid down. Hence, present appeal for further extension is dismissed.

Space to write important points for revision

2022 - June [2] (a) M/s. Alpha LLP with M/s. Beta Pvt. Ltd., and their respective partners, shareholders, and creditors proposed to be amalgamating Alpha (Transferor) with Beta (Transferee). The petition for joint company; under section 230 to 232 of the Companies Act, 2013, and Companies (compromises, Arrangements, and Amalgamation) Rules, 2016

and National Company Law Tribunal Rules, 216; before National Company Law Tribunal (NCLT), Delhi. Alpha is incorporated on 4th February, 2016 under the provisions of Limited Liability Partnership (LLP), Act, 2008 and its registered office in Delhi. Beta is a private limited company incorporated on 12th February, 2017 under the Companies Act, 2013 and having its registered office in Delhi. Alpha and Beta are engaged in the establishing and/or acquiring Health care related products.

NCLT found that all statutory requirements have been fulfilled as per Companies Act, 2013. NCLT also discovered that LLPs can be incorporated into a company under Section 394(4)(b) of the Companies Act, 1956, but that no such provision exists in the Companies Act, 2013. Because section 234(2) of the Companies Act, 2013 allows a foreign LLP to combine with an Indian business, it would be incorrect to assume that section 234(2) of the Companies Act, 2013 forbids an Indian LLP from merging with an Indian company. By the assailed order, the NCLT applied the Casus Omissus principle and authorised the merger of Alpha and Beta. **(6 marks)**

2022 - June [2] (b) Ajay Oza was a director in several companies and was barred from being appointed or reappointed as a director for a term of five years under Section 164(2)(a) due to a failure by one of the firms to file annual returns and financial statements for the financial year 2015-17. In 2018, the list of directors that were disqualified was made public. Before the Gujarat High Court, Ajay challenged the list of disqualified directors for defaults in the financial years 2013-15 and 2014-17.

Was there a requirement to provide prior notice and an opportunity to be heard before publishing the list of disqualified directors? **(6 marks)**