Scanner Appendix

CS Executive Programme Group - I
(Solutions of June 2024)

Paper - 2 : Company Law and Practice

Chapter - 1 : Introduction to Company Law

2024 - June [2] (c)

Foreign Company:

Under section 2 (42) of the Act, "Foreign Company" means any company or body corporate incorporated outside India.

which, —

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

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

As per Rule 2(i)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014. "Electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education, and information research.

In the given case, Sunrise Online Coaching Limited is a company registered in Singapore. It has no place of business established in India but is doing online business through electronic mode in India having its main server for online business outside India.

As per the definition of "Electronic Mode", the Company incorporated outside India, conducting business in India through electronic mode whether main server is installed in India or not, the company will be treated as a foreign company.

2024 - June [4A] (Or) (iii)

While the doctrine of, "constructive notice" seeks to protect the company against the outsiders, the principal of "indoor management" operates to protect the outsiders against the company.

This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company. The doctrine of indoor management, also known as the Turquand rule is about one fifty years old, which protects outsiders against the actions done by the company.

Section 176 of the Companies Act, 2013 States that for the validity of acts of Directors - No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles of the company; Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or have been terminated.

The object of the section is to protect persons dealing with the company - outsiders as well as members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the Articles of the company.

1. **Forgery:** The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio.
2. **Negligence:** The 'doctrine of indoor management', in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an enquiry, he is estopped from relying on the Rule.

Chapter-2 : Legal Status and Types of Registered Companies

2024 - June [4A] (Or) (i)

Distinguish between private and Public Center Company:

The Following are important main points of distinction:

1. **Minimum Number of Members:**
   In case of a private company, the minimum number of persons to form a company are two, while it is seven in the case of public company.
2. **Maximum number of Members:**
   In case of private company. the maximum number of members shall not exceed two hundred, whereas there is no such restriction on the maximum number of members in the case of a public company.
3. **Transferability of Shares:**
   As per section 44 of the Companies, Act, 2013, the shares of any member in a company shall be movable property and transferrable in the manner provided by the Articles of Association of the company.
4. **Prospectus:**
   A private company cannot issue a prospectus, the Act prohibits any invitation to the public to subscribe for any securities of the company. while a public company may, through prospectus, invite the public11 to subscribe for its securities.
5. **Minimum numbers of Directors:**
   A private company must have at least two directors on Board, whereas a public company must have at least three directors on Board.
6. **Retirement of Directors:**
   Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rd of the directors must be such whose period of office is subject to retirement by rotation.
7. **Quorum for General Meetings:**
   Unless the Articles of Association of the company provide for a larger number, in case of public company the quorum for general meetings shall be:
   i. five members personally present if the number of members as on the date of meeting is not more than one thousand.
   ii. fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five

thousand.

iii. thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

In case of a private company, unless Articles of Association provide for a higher number, two members personally present. shall be quorum for a meeting of the company.

Chapter-4A : Share Capital, Issue and Allotment of Securities

2024 - June [2] (b)

Company can issue shelf prospectus under Section 31 of the Companies Act, 2013, read with Rule 10 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 to avoid repeated issuance of prospectus.

Definition: Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue4 of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public issue.

Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period.

Validity Period: Under section 31 of the Act, any class or classes of Companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the Registrar.

Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus.

The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

Filing of Information Memorandum (FORM PAS-2) with ROC: An information memorandum is required to be filed by a company filing a shell prospectus which shall contain all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of Securities or the previous offer of securities and the succeeding offer of securities; and such other changes as may be

prescribed.
The Information Memorandum shall be prepared in Form PAS-2 and filed with the Registrar within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.
Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Chapter - 4B : Issue of Securities
2024 - June [3] (b)
As per section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members. in any manner whatsoever, out of- (Sources)

- Its free reserves
- Securities premium account
- The capital redemption reserve account

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets
Conditions for issue of Bonus Shares:
In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

(a) **Authorisation in AOA:** It is authorised by its articles.
(b) Passing of Ordinary Resolution: It has, on the recommendation of the Board, been authorised in the general meeting of the company.
(c) **No defaults:** It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; it has not defaulted in respect of the payment of statutory dues
of the employees, such as, contribution to provident fund, gratuity and bonus.

(d) **Fully paid-up shares:** The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
(e) **No issue in lieu of dividend:** The bonus shares shall not be issued in lieu of dividend.

Maximum number of shares to be issued:

The company proposes to issue 1 bonus share for every 2 equity shares. The issued and fully paid- up shares are 10,00, 000. Hence, the company wants to issue 5,00,000 shares, the face value of which will be ₹ 50,00,000 and reserve of equal amount is required.

As per Section 71 of the Companies Act, 2013, where the company has created a debenture redemption reserve account, the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The aggregate of eligible reserves come to ₹ 40,00,000 (₹ 30,00,000 + ₹ 10,00,000).

Conclusion: Therefore, Sufficient reserves are not available and the company cannot implement its proposal to issue 1bonus share for every 2 shares.

Chapter - 4C : Buy Back of Securities and Reduction of Share Capital
2024 - June [2] (d)

By back of Securities:

Circumstances prohibiting buy-back [Section 70(1) of the Companies Act, 2013]

No company shall directly or indirectly purchase its own shares or other specified securities

(a) through any subsidiary company including its own subsidiary companies;
(b) through any investment company of group of investment companies; or
(c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Although, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

According to section 70(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (Annual Return), section 123 (Declaration of Dividend), section 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement).

Conclusion: Hence, NRS Bio Chemicals Limited cannot buy back its share until the expiry of cooling period (3 years) after the default is remedied since it has defaulted in repayment of loan and not filed the annual return for the financial year 2022-23.

Chapter - 5 : Members and Shareholders

2024 - June [2] (e)

(i) Section 88(4) of the Companies Act, 2013 empowers companies to keep foreign registers of members or debenture- holders, other security holders or beneficial owners residing outside India. It states:

- "A company may, if so, authorized by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in section 88(1), called "foreign register" containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India."
- A foreign register is deemed to be a part of the company's principal register and it should be kept in the same manner as the principal register and be likewise open to inspection.
- A duplicate of such register should be maintained at the registered office in India and all entries made in the foreign register should be made in the duplicate register at the registered office as soon as possible.

(ii) According to Rule 7(11) of the Companies (Management and Administration) Rules, 2014, the company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

Conclusion: In the above case the Company has the option to discontinue maintenance of foreign register of
member

Chapter - 6 : Debt Instruments

2024 - June [3] (a)

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

(i) ₹ 12,00,000 raised by Tiwari Exports Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub- clause (ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,00,000 (Rupees Two crore) received by National Refrigeration Limited from Mr. Ankit, as an advance for the supply of goods, but appropriated the said advance after the expiry of 390 days (i.e., more than 365 days).Therefore, this amount will be considered as deposit in terms of Rule 2 (1) (c)(xii)(a).

(iii) ₹ 50,00,000 by ABC Pvt Limited from Ms. Priya (i.e. relative of Director), will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c), because she has given a declaration that the amount is given out of her self-acquired funds and not from borrowing etc.

Chapter -7 : Charges

2024 - June [4] (c)

Registration of the particulars of the charge created:

According to section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given case, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge. Therefore, the stand taken by Rockstar Limited not to register the particulars of charge created on the assets located outside India is not correct.

Timeline: The particulars of the charge together with a copy of the instrument, if any, creating or

modifying the charge shall be filed with the Registrar within a period of 30 days of the date of creation or modification of charge.

Effect of non-registration of Charges:

As per Section 77 (3) of the Companies Act, 2013, where the particulars of the charge created are not filed with the Registrar of Companies, such charge created by a company shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016, as the case may be, or any other creditor of the company.

Chapter - 9 : Accounts and Auditors

2024 - June [3] (c)

Given problem is based on removal of auditor by Tribunal in event of fraud u/s 140(5) of the Companies Act 2013.

As per the provisions of Section 140(5) of the Companies Act, 2013, the Tribunal may either

- Suo motu or
- on an application made to it by the Central Government or
- by any person concerned,8

If it is satisfied that the auditor of a company has whether directly or indirectly acted in a fraudulent manner, or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers , it may, by order, direct the company to change its auditors.

Section further prodives that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Based upon the given provision. we may conclude as follow:

(i) This Section authorizes the Tribunal to pass order for directing the company to change the auditor. Although the Tribunal shall not directly remove the auditor. The application is tenable as it is made by the persons concerned.

(ii) Auditor pf Green Stone Limited so removed shall not be eligible for appointment as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447 of companies Act, 2013.

2024 - June [4] (b)

(i) As per section 141(3)(d)(iii) of the Companies Act, 2013 read with rule 10 of the Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner has given a guarantee or provided any security in connection with the

indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees.

In the given problem, Keshav will be disqualified to be appointed as an auditor of MNO Ltd as his partner (i.e. Naveen) had given a guarantee for ₹1.10 lakhs (i.e. more than the limit of ₹. 1 lakh), in

connection with the indebtedness of any third person to the subsidiary of the company.

(ii) As per section 141(3)(d)(ii) of the Companies Act, 2013 read with rule 10 of The Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs.

In this case, Aryaman will not be disqualified to be appointed as an auditor of DEF Ltd. As he is indebted to DEF Ltd. for ₹ 4,95,000 which is within the limit (i.e. less than ₹ 5 lacs).

(iii) In this case, since Manju, wife of Vaibhav, (Chartered Accountant) is the Purchase Manager (not a director or KMP) of RST Ltd.

Conclusion: Therefore, Vaibhav will not be disqualified to be appointed as an auditor in the said Company.

Chapter - 10 : Compromise, Arrangement and Amalgamation

2024 - June [1]

Section 230(6) of the Companies Act, 2013 provides that the scheme shall be approved when at a meeting held in pursuance of section 230(1), majority of persons representing 3/4th in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement scheme. In given case out of 1200 members, 900 members attended the meeting, but only 780 members voted at the meeting. As 420 members voted in favor of the scheme, the requirement relating to majority in number (i.e. 390) is satisfied.

780 members who participated in the meeting held 56,00,000 shares, three-fourth of which works out to 42,00,000 shares while 420 members (more than 390 i.e. 50% of 780) who voted for the scheme held 44,00,000 shares (more than 42,00,000 shares).

Conclusion: As both the requirements are fulfilled, the scheme is approved by the requisite majority.

2024 - June [2] (a)

According to section 233(1) of the Companies Act 2013, notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between:

- 2 or more small companies or
- a holding company and its wholly owned subsidiary company or
- Such other class or classes of companies as prescribed.
  - (i) two or more start-up companies; or
  - (ii) one or more start-up company with one or more small company.

The provisions given for fast track merger in section 233 of the Act are optional in nature and not a compulsion on the company.

Section 233(14) provides that a company covered under Section 233 may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

Conclusion: Therefore, with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Companies Act, 2013, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act.

Hence, here the opinion of Company Secretary of Q Limited can be said to be not correct and his contention is not valid as per the law. The company shall have an option to choose between normal process of merger under Section 232 read with Section 230 and fast track merger under Section 233.

2024 - June [4A] (Or) (ii)

Apply for relief against oppression and mismanagement:

According to Section 244 of the Companies Act, 2013, in the case a company having share capital, following members are eligible to apply for relief against oppression and mismanagement under Section 241 namely:

(a) not less than100 members of the Company or not less than 1/10th of the total number of its members whichever is less; or

(b) any member or Members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

The share holding pattern of DEF Limited is given as follows:

The issued and paid-up share capital of DEF Limited is ₹ 20,00,00,000 (Rupees Twenty Crore) consisting of 20,00,000 equity shares of ₹.100 each. The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition - 320

(ii) Amount of share capital held by members making the petition - ₹ 40,00,000 (40,000 shares × ₹ 100)

The petition shall be valid if it has been made by the lowest of the following;
100 members; or
200 members (being 1/10th of 2000); or
Members holding ₹ 2,00,00,000 share capital (being 1/10th of ₹ 20,00,00,000)

As it is evident, the petition made by 320 members (being more than 100 members) meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 100 members in this case. Therefore, the petition is maintainable.

The consent to be given by the shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect maintainability of the petition.

Chapter - 12 : Inspection, Inquiry and Investigation

2024 - June [4] (a)

Powers of tribunal as to freezing of assets of Company and imposing

(i) As per Section 221 of the Companies Act, 2013, where it appears to tribunal on reasonable ground to believe that removal or transfer or disposal of funds, assets or properties of company is likely to take place in manner prejudicial to interests of company or its shareholders or creditors or in public interest, tribunal may by order direct that such

transfer, removal or disposal shall not take place during such period not exceeding 3 years as may be specified in the order or may take place subject to such conditions and restrictions as the tribunal may deem fit.

Conclusion: Thefefore, the tribunal may pass an order to freeze the assets of the company.

(ii) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal as specified above, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakhs.
Hence, the tribunal may punish the company for the contravention of the order of the tribunal.

(iii) In term of Section 227 of the Companies Act, 2013 even during an investigation, the legal adviser cannot be compelled to provide the information of any privileged communication made to him in that capacity, except as respects the name and address of his client, or by the bankers of any company, body corporate, or other person of any information as to the affairs of any of their customers, other than such company, body corporate, or person, to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government.

Conclusion: Therefore, the legal advisers and bankers of XYZ limited cannot be compelled to provide privileged communication.

Chapter - 13 : General Meetings

2024 - June [6] (d)

MINUTES OF THE PROCEEDINGS OF THE EXTRA ORDINARY GENERAL MEETING OF

(Name of the Company) HELD ON ..... (day)……(date) 20.....FROM .....

TO……..A.M./P.M AT.....(address).

The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)

4. Mr. F (Company Secretary)
5. (Members present in person) (state number}
6. ..... (Members present by Proxy) {state number}

Mr. G, Partner of M/s, ……..Chartered Accountants, Auditors of the Company,

Chairman:

In accordance with Article ..... of the Articles of Association, Mr. A, Chairman of the Board of Directors took the Chair.

Introduction:

The Chairman welcomed the Members and introduced the Directors seated on the Dias. The Chairman stated that Mr. and Mr.....Directors, could not attend the Meeting due to..... (explain the reason for absence).

Quorum:

The Chairman stated that the requisite Quorum was present and called the meeting to order.

Notice:

With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

Appointment of Independent Director Proposed by : Mr. ..... Seconded by : Mr. .....

The Chairman explained the profile of Mr. Ankush to the members. He explained that in order to broadbase the board, it was proposed to appoint Mr. Ankush , a legal expert as an Independent Director.

The folllowing Resolution having been proposed and seconded respectively by the aforementioned

Members was put to vote as an Ordinary Resolution:

“Resolved that pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and any other rules made there under read with Schedule IV to the Companies Act. 2013, approval of the Company be and is hereby accorded for appointment of Mr. Ankush (DIN No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to .....

AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."

The Chairman enquired from the Members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands , declared carried by the requisite majority.

Close of the Metting:

There being no other business to transact the Meeting closed with a vote of thanks to the Chair.

Date:……..

Place:…….

CHAIRMAN

2024 - June [6A](Or) (ii)

Holding of Annual General Meeting (Section 96 of the Companies Act, 2013):

1. Annual general meeting (AGM) should be held once in each calendar year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Therefore, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
4. The gap between two annual general meetings shall not exceed 15 months.
5. Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
6, 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.

Additional Compliance for listed Companies: Additionally, for listed

entities, Regulation 44(5) and 44(6) of SEBI (LODR) Regulations, 2015 provides that the top 100 listed entities by market capitalization. determined as on March 31st of every financial year shall hold their annual general meeting within a period of five months from the date of closing of the financial year. The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

Explanation: The 100 entities shall be determined on the basis of market Capitalization, as at the end of the immediate previous financial year.

Exemption to OPC: As provided in sub-section (1) of section 96, one person company is not required to hold Annual General meeting.

As per 1.1 of SS-2 States that the Board shall, every year, convene or authorize convening of meeting of its members called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an annual general meeting as well as special business, if any. If the Board fails to convene its Annual General Meeting in any year, any member of the company may approach the prescribed authority which may then direct the calling of the Annual General Meeting of the company.

Chapter - 14 : Directors

2024 - June [6A](Or) (iv)

Removal of a non-rotational managing director is possible, As section 169 of the Companies Act, 2013 empowers the members to remove any director, whether he is rotational or non- rotational director, or managing director, whole time director or a non-executive director.

Steps to be taken by Mr. Sunil

Mr. Sunil shall have to give a special notice to the company in accordance with the provisions of Section 115 of the Companies Act, 2013.

In the special notice. Mr. Sunil shall propose a resolution for removal of the managing director. The special notice must be -

(i) given to the company not earlier than 3 months before the date of the general meeting but at least 14 days before the general meeting (excluding the day on which such notice is given and the day of the general meeting);

(ii) signed by member(s) holding not less than 1 % of total voting power or member(s) holding shares on which an aggregate sum of not less

than five lakh rupees has been paid up on the date of the notice.

Procedure/Steps to be taken by the company

(a) **On receipt of notice by the company:** The Company shall immediately after the receipt of the notice, give its members notice of the resolution at least 7 days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

(b) **Publication of notice:** Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated.

(c) **Special Notice:** On receipt of special notice, the company shall send a copy to the managing director concerned.

(d) **Representation:** Managing Director concerned if make representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so:
   (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
   (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the concerned director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

(f) The general meeting shall be held.

(g) The managing director shall have a right to be heard at the meeting. The right to make an oral representation is in addition to written representation.

Chapter - 15 : Board Composition and Power of the Board

2024 - June [5] (a)

Inter Corporate Loan and Investment:

Section 186 of the Companies Act, provides that the provisions relating to Loan and Investment by a Company. According to Section 186(2) of the Act, no Company shall directly or indirectly:

(a) give any loan to any person or other body corporate;
(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
(c) acquire, by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital (equity and preference), free reserves and securities premium account or 100% of its free reserves and securities premium account, which ever is more.

As per Section 186 (3) of the Act, where the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Act, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.

As per Section 186 (5) of the Act, any investment shall be made or loan or guarantee or security given by the Company only after the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the Public financial Institution concerned where any term loan is subsisting shall also be obtained.

Calculation:

According to the information given in the problem:

60% of paid-up share capital (equity and preference), Free reserves and securities premium account is ₹ 168 Lakh
(i.e. 60% of [₹ 240 + 20+20] = ₹ 168 Lakh) or

100% percent of its free reserves and securities premium account is ₹ 20 lakh;

Therefore, investment up-to ₹ 168 lakh is allowed without seeking prior authority by special resolution passed in a general meeting.

Bunny Ltd has already given guarantee to the tune of ₹ 100 Lakh to a Nationalized Bank in connection with the loan granted to Richa Ltd.

The aggregate of the loans and investments so far made, the amount for

which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made is ₹ 180 Lakh (i.e.₹ 100 Lakh existing guarantee + proposed investment of ₹ 80 Lakh) which is exceeding the limit of ₹ 168 Lakh.

Conclusion: Hence, the proposed investment shall be first approved by the Board with the consent of all the directors present at the meeting (i.e unanimously) and then approved by the members by passing a Special resolution.

Note:

The MCA has clarified that loans and/or advances made by the companies to their employees, other than the Managing or Whole Time Director are not governed by Section 186 of the Act. Hence, it is not considered in the computation of limit.

2024 - June [5] (b)

Public Financial Institution:

(i) In terms of Section 186(5) of the Companies Act, 2013, prior approval of the Public Financial Institution (PFI) shall not be required where:

- the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, does not exceeding 60%. of its paid-up share capital, free reserves and securities premium account or100%. of its free reserves and securities premium account, whichever is higher under Section 186(2) of the Act; and
- there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the PFI.

  Although, in this case, for the Bunny Limited, the aggregate of the amount for which guarantee or security so far provided, along with the investments, proposed to be made is ₹ 180 Lakh (i.e. ₹ 15 100 Lakh existing guarantee + proposed investment of ₹ 80 Lakh) which has exceeded the limit of ₹ 168 Lakh

(i.e.the limits specified under Section 186(2) of the Act).
Since the proposed investment will exceed the limits specified under section 186(2) of the Act, prior approval of the Public Financial Institution will be required.

(ii) Section 186(2) stipulates that no company shall directly or indirectly.
   (a) give any loan to any person or other body corporate;
   (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
   (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60%. of its paid-up share capital, free reserves and securities premium account or 100%. of its free reserves and securities premium account, whichever is more.

Conclusion: Accordingly, Section 186 of the Companies Act, 2013 is applicable to both public and private companies.
Therefore, no exemption is available to Bunny Ltd. in case it is a private company.

2024 - June [5] (c)
It is clarified by way of clause (a) of Explanation to Section 186 of the Companies Act, 2013 that the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities.
Further, a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities:

1. if its assets in the form of investment in shares, debentures or other securities constitutes not less than fifty percent of its total assets; or
2. if its income derived from investment business constitutes not less than fifty percent as a proportion of its gross income.

In the given provisions, it is clear that even if a company satisfies any one out of two criteria, it would be treated as an investment company.
Investment Test:
The total assets of Hunny Investment Pvt Ltd. as on 31.03.2023 is ₹ 330 Lakh. Investment in shares and debentures of a body corporate is ₹ 200 lakh

which is higher than 50% of the total assets.

Income Test:

Income derived from investment in shares and debentures is ₹ 30 Lakh which is less than 50% of the gross income of ₹ 100 Lakh

So, Hunny Investment Pvt. Ltd satisfies the Investment Test, it is an Investment Company.

2024 - June [5] (d)

Terms & Conditions for Small Shareholders' Director:

Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of Small Shareholders Director (SSD), which include inter alia the following:

Election of small shareholders director:

A listed company, may upon notice of not less than:

(a) One thousand small shareholders; or

(b) One-tenth of the total number of such shareholders,

whichever is lower; have a small shareholder director elected by the small shareholder.

1/10th of the small shareholders would come to 2,000.

Although, the notice has been given by more than 1,000 small shareholders. Hence, they are entitled to make such requisition.

Whether mandatory:

A listed company may upon notice appoint Small Shareholder Director (SSD). A Small Shareholders' Director may be elected voluntarily by any listed company.

So, a listed company may on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required.

The word used is "may" in Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Therefore, it is not mandatory for the company to appoint SSD, even if the notice is received from the eligible SS.

Duration of office and no retirement by rotation:

The duration of small shareholder director shall not exceed a period of 3

consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

Chapter - 16 : Meetings of Board and its Committees

2024 - June [6] (b)

Notice of the.....(insert sequence number of the meeting) Board Meeting of……. Pvt Ltd /Ltd having its registered office at.....

To,

Mr. / Ms. (Director Name)

……. (Address)

Dear Sir/Madam,

Pursuant to the requirement of Section 173 (3) of the Companies Act. 2013 read with applicable Secretarial Standards, notice is hereby given that …….(insert sequence number of the meeting) meeting of the members of the Board of Directors of the Company will be held on.....(Day of the week), the.....(Date) day of …….(Month),..... (year) at ..... (time) at……. (address of the venue of the meeting).

The agenda of the business to be transacted at the meeting, along with detailed notes thereon and requisite annexures are enclosed herewith.

You are requested to make it convenient to attend the meeting.

Directors may attend the meeting in person or through Video Conferencing / Other Audio Video Means (VC/ OAVM). A Director desirous of attending the meeting through VC/ OAVM should inform well in time so as to make suitable arrangements accordingly.

For…… (Name of the Company)
Sd/-
(Name)
(Designation)
Place:
Date:
Enclosure: Agenda of the business to be transacted at the meeting.

2024 - June [6A] (Or) (iii)

Inspection and Extracts of Minutes of Board meetings:

1. The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors. Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.
2. A Director is entitled to inspect and receive, a copy of the Minutes of a Meeting held before the period of his Directorship. A Director is entitled to inspect and receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.
3. The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.
4. While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

Note: A Member of the company is not entitled to inspect the Minutes of Meetings of the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Preservation of Minutes:

1. The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the Company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.
2. Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.
   The above provisions can be explained to him.

Chapter - 17 : Corporate Social Responsibility

2024 - June [6] (c) (i)

Sample Board Resolution to approve and adopt a new CSR Policy

"Resolved that pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors of the company do and hereby approve a new CSR Policy in supersession of the existing CSR Policy dated ..... in compliance with the requirements under Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

Resolved Further That the new CSR Policy be and is hereby approved and signed by Mr./Ms._____Director.

Resolved Further That the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company."

Chapter - 18 : Annual Report
2024 - June [6] (c) (ii)
Specimen Board Resolution for approval of the Board's Report
"Resolved THAT the Boards' Report to be sent to the Shareholders of the company for the year ended 31st March..... prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together with all the Annexures thereto (as per draft placed before the Board and initialed by the Chairman for identification purposes) be and is hereby approved and the same be signed by Shri..... Chairman of the company, or in his absence, by Shri……. Managing Director and Shri ..... Director for and on behalf of the Board of Directors of the company."

Chapter - 19 : Key Management Personnel and their Remuneration
2024 - June [6] (a)
"Resolved That Pursuant to the provision of section 203 (1) of the Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 and any other applicable provisions of the Act and Rules framed thereunder, including any amendments thereto or reenactment there of from time to time, Mr. _____Membership No._____of the Institute of Company Secretaries of India (ICSI) be and is hereby appointed as the "Company Secretary" of XYZ Textiles Limited (the Company) on the terms and condition including the terms of remuneration as per appointment letter placed before the meeting, and as recommended by the nomination and remuneration committee."
"Resolved Further That pursuant to regulation 6 and 30 read with clause 7 of para A of Part A of Schedule III of SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, Mr._____be and is hereby designated and appointed as the "Compliance Officer" of the company and authorised to make all the compliances as may be applicable to the company under the SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, various other SEBI Regulation, Securities Contract Regulation Act 1956, Industrial and labour laws and other laws as may be applicable to the Company from time to time."
"Resolved Further That the company secretary and compliance officer be

and is hereby authorised to sign various documents and file forms/ returns on behalf of the company as may be necessary and to do all such acts, deeds. things, and matters incidental there to give effect to the aforesaid resolution.

"Resolved Further That Mr._____ ,Managing Director of the Company be and is hereby authorised to sign and submit necessary forms/ returns for the appointment of company secretary with the Registrar of Companies, _____, and also be authorised to intimate the same to the appropriate authorities / regulatory bodies and to do all such acts and deeds as may be necessary in this regard.

2024 - June [6A] (Or) (I)

Managerial Remuneration:

Section 197 read with Section 198 and Schedule V of the Companies Act, 2013 provides that the provisions related to managerial remuneration.

As per Section 197 (3) of the Act, notwithstanding anything contained in sub-sections197 (1) and 197(2), but subject to the provisions of Schedule V, if in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, or any other non-executive director, including an independent director by way of remuneration any sum exclusive of any fees payable to directors under 197 (5) hereunder except in accordance with the provisions of Schedule V where under slab- wise limit on managerial remuneration on the basis of the effective capital of the company has been stipulated.

Computation of Effective Capital of Company for determining managerial remuneration:

Particulars	**Amount ₹ (Cr.)**
Paid-up equity share capital	40
Debenture redemption reserve	40
Securities Premium Account	80

Revaluation Reserve (excluded)	----
Profit and Loss (Loss)	(40)
Effective Capital	**120**

As per the limit stipulated if the effective capital is INR 100 crores and above but less than INR 250 Crores the maximum yearly remuneration payable to the managerial persons shall not exceed INR 120 Lakhs.

In the given case, the effective capital of the company is INR 120 crores. Therefore, the company can pay renumeration to the managing director maximum up-to ₹120 lakhs without seeking approval of shareholders by passing a special resolution.

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