

MOCK TEST PAPER 1
INTERMEDIATE GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS
ANSWERS

Division A

- I. 1. (c)
2. (d)
3. (c)
4. (d)
5. (c)
6. (b)
7. (c)
8. (c)
9. (b)
10. (b)
11. (d)
12. (a)
13. (b)
14. (a)
15. (c)
16. (a)
17. (c)
18. (b)
19. (d)
20. (c)
21. (a)

Division B

1. (a) As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

- (i) Appointment of Mr. Chatterjee by the Board of Directors is valid as per the provisions of section 139(6).
 - (ii) Appointment of Mr. Chatterjee at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Chatterjee is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.
- (b) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule;

- a. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- b. Where the subsidiary company holds such shares as a trustee; or
- c. Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

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

- (c) According to the provisions of section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the instant case, Masoom (Creditor) cannot sue Pankaj (Surety), because Pankaj is discharged from liability when, without his consent, Kamal (Principal debtor) has changed the terms of his contract with Masoom (creditor).

- (d) According to section 9 of the Negotiable Instruments Act, 1881, 'holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is

defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

2. (a) Section 105(1) of the Companies Act, 2013, provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. Happy Limited refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

- (b) (i) **Signing of Board's Report** [Section 134(6)]: The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(ii) **Annual General meeting not held** [Section 137(2)]: Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

- (c) As per Section 148 of the Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.

(i) Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Golu, section 148, of the Indian Contract Act, 1872 shall not be applicable. Hence, it is not bailment.

(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

- (d) 1. In a promissory note, there are only 2 parties namely:

i. the maker and

ii. the payee

2. In a bill of exchange, there are 3 parties which are as under:

i. the drawer

ii. the drawee

iii. the payee

3. (a) Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is

authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer (valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed).

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

- (b) Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:
- (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and
 - (b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. A will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

- (c) **Material alteration:** An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto.

Any alteration is material:

- (a) which alters the business effect of the instrument if used for any business purpose;
- (b) which causes it to speak a different language in legal effect form that which it originally spoke or which changes the legal identity or character of the instrument.

The following alteration are specifically declared to be material: any alteration of (i) the date, (ii) the sum payable, (iii) the time of payment, (iv) the place of payment, or the addition of a place of payment.

A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence, adding the words "on demand" does not alter the business effect of the instrument.

- (d) **Rule of Literal Construction**

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "*absoluta sententia expositore non indeget*" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation

would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Viraj (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.

Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

4. (a) **Application of Securities Premium Account:** As per the provisions of sub-section (2) of section 52 of the Companies Act, 2013, the securities premium account may be applied by the company—
- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
 - (b) in writing off the preliminary expenses of the company;
 - (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
 - (e) for the purchase of its own shares or other securities under section 68.
- (b) Regarding the validity of Proposals w.r.t change of registered office by A Limited in the light of section 12 of the Companies Act, 2013:
- (i) In the first case, the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.
As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.
 - (ii) In the second case, change of registered office within the local limits of the same city.
Said proposal is valid in terms it has been passed under the authority of Board resolution.
- (c) According to section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the given question, the court fixed the date of hearing of dispute between Yellow and Pink, on 29.04.2022, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the hearing date of 29.04.2022, shall be extended to the next working day.

- (d) (i) **Definitions subject to a contrary context:** When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.
- (ii) **Ambiguous definitions:** Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

- 5. (a) Normally, general meetings are to be called by giving at least 21 clear days' notice as required by section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of section 101, if consent, in writing or by electronic mode, is accorded thereto—

in the case of any other general meeting (i.e. other than annual general meeting), by members of the company—

- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

Second proviso to section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Thus, if the meeting is called after obtaining the consent from members holding at least ninety-five per cent of the paid-up share capital of the company, the meeting can be validly called at shorter notice.

- (b) According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:
 - (a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court

of law, the time limit of three hundred and sixty-five days shall not apply.

- (b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;
- (c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
- (d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
- (e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
- (f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- (g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

- (c) (i) **Agent:** means a person employed to do any act for another or to represent another in dealing with the third persons
Principal: means a person for whom such act is done or who is so represented.
- (ii) **Who may appoint an agent:** According to section 183 of the Indian Contract Act, 1872, any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent.
- (d) According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.