

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

Division A

1. (i) (b)
(ii) (d)
(iii) (b)
2. (i) (c)
(ii) (a)
3. (c)
4. (b)
5. (c)
6. (a)
7. (b)
8. (d)
9. (c)
10. (c)
11. (c)
12. (b)
13. (b)
14. (b)
15. (a)

Division B

1. (a) Sweat Equity Shares are governed by section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to section 54, the company can issue sweat equity shares to its director and permanent employees of the company.

According to proviso to rule 8 (4), a start up company, [as defined in notification number G.S.R.127(E), dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India], may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non- transferable for a period of three years from the date of allotment.

Hence in the above case, the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock

in period of the shares is limited to maximum three years period from the date of allotment (as not five years, as given in the question).

- (b) According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Dew Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

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

Consequences: The following are the consequences for violation of the above provisions:

- (i) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.
 - (ii) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (c) According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal.

Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, David gets a good title to the watch. Monu is not liable to Alia for his negligence in the performance of his duties.

- (d) According to section 9 of the Negotiable Instrument 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 mentioned 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.

In the instant case, Mr. Amna draws a cheque of Rs. 11,000 and gives to Mr. Babita by way of gift.

Hence,

- (1) Mr. Babita is holder but not a holder in due course since he did not get the cheque for value and consideration.
- (2) Mr. Babita's title is good and bonafide. As a holder he is entitled to receive Rs. 11,000 from the bank on whom the cheque is drawn.

2. (a) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Pam, therefore, ought to have been careful while purchasing property and should have verified beforehand that ABC Limited had already created a charge on the property.

In view of above, the contention of ABC Limited is correct.

- (b) As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
 - (i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Shrey Ltd. for the financial year 2009-2010 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2020-2019, is invalid.

- (c) Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Yash's shop, when Mrs. Shriya herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. Shriya did not deliver the complete possession of the good by keeping the keys with herself.

(d) The parties to a bill of exchange are:

1. **Drawer:** The maker of a bill of exchange.
2. **Drawee:** The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
3. **Payee:** The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

3. (a) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

- (b) (i) As per section 141(3)(d)(ii), 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 the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lacs.
- (ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.
- (c) **Person to be called as a holder:** As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases-

- (1) No, Megha is not a holder of the Instrument though she is in possession of the cheque, so is not entitled to the possession of it in his own name.
- (2) No, Bob is not a holder because he is in wrongful possession of the instrument.

- (d) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

4. (a) (1) According to section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by—
- (a) 7 or more persons, where the company to be formed is to be a public company;
 - (b) 2 or more persons, where the company to be formed is to be a private company; or
- by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to section 3A,

- If at any time the number of members of a company is reduced,
 - in the case of a public company, below 7,
 - in the case of a private company, below 2,and the company carries on business for more than six months while the number of members is so reduced, then
- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant (aware) of the fact that it is carrying on business with less than seven members or two members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after six months) and may be severally sued therefore.

- (b) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

- (i) (1) P1, P2 and P3 will be counted as three members.
- (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of Kavita Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

- (c) Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).

- (d) Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:
- (1) what was the law before making of the Act,
 - (2) what was the mischief or defect for which the law did not provide,
 - (3) what is the remedy that the Act has provided, and
 - (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi (1957) 32 ITR 615 (SC)*].

5. (a) The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mana being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

- (b) Section 2(16) of the Companies Act, 2013 defines "charge" as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar

shall be verified by a certificate issued either-

- ◆ under the seal, if any, of the company, or
 - ◆ under the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or
 - ◆ under the hand of some person other than the company who is interested in the mortgage or charge.
- (c) Section 124 of the Indian Contract Act, 1872 states that “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person”, is called a “contract of indemnity”.

Section 126 of the Indian Contract Act, 1872 states that “A contract to perform the promise made or discharge liability incurred by a third person in case of his default” is called a “contract of guarantee”.

The conditions under which the guarantee is invalid or void is provided in section 142, 143 and 144 of the Indian Contract Act. These include:

- (i) Guarantee obtained by means of misrepresentation.
 - (ii) Guarantee obtained by means of keeping silence as to material circumstances.
 - (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.
- (d) **“Meaning of Service by post”:** According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
- (i) properly addressing
 - (ii) pre-paying, and
 - (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.