

## PAPER – 2 : CORPORATE & OTHER LAW

Question No. 1 is compulsory.

Attempt any **four** questions from the remaining **five** questions.

### Question 1

- (a) XYZ a One-Person Company (OPC) was incorporated during the year 2014-15 with an authorized capital of ₹ 45.00 lakhs (4.5 lakh shares of ₹ 10 each), The capital was fully subscribed and paid up. Turnover of the company during 2014-15 and 2015-16 was ₹ 2.00 crores and ₹2.5 crores respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2016-17. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:
- (i) If promoter increases the paid up capital of the company by ₹ 10.00 lakhs during 2016-17.
- (ii) If turnover of the company during 2016-17 was ₹ 3.00 crores. **(4 Marks)**
- (b) ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

		₹
(1)	Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?
- (ii) What if company decide to give bonus shares in the ratio of 1:2? **(2 Marks)**
- (c) (i) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of ₹ 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment. **(3 Marks)**
- (ii) Karan was holding 5000 equity shares of ₹ 100 each of M/s. Future Ltd. A final call of ₹ 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive. **(3 Marks)**

- (d) Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of ₹ 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay ₹ 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ₹ 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's Appointment. **(3 Marks)**
- (e) Komal Ltd. declares a dividend for its shareholders in its AGM held on 27<sup>th</sup> September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
- (i) The dates during which Komal Ltd. is required to pay the dividend?
  - (ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? **(4 Marks)**

**Answer**

- (a) As per Rule 3 of the Companies (Incorporation) Rules, 2014, no One Person Company (OPC) can convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Based on the above provisions, our advice in the given circumstances will be as under:

- (i) The promoter increases the paid up capital of the company by ₹ 10.00 lakh during 2016-2017, i.e., to ₹ 55 lakhs (45+10= 55). In this situation, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.
  - (ii) Where the turnover of XYZ (OPC) during 2016-17 was ₹ 3.00 crore, there will be no change in the answer. In this situation also, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.
- (b) **Issue of bonus shares [Section 63]:** As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
- (i) its free reserves;

- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

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

As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e.,  $\frac{1}{3} \times 30.00$  lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
  - (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e.,  $\frac{1}{2} \times 30.00$  lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.
- (c) (i) **Transfer to reserves (Section 123 of the Companies Act, 2013):** A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of ₹ 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

- (ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of ₹ 50,000 unpaid call money against the declared dividend of 10%, i.e.  $5,00,000 \times \frac{10}{100} = 50,000$ . Hence, Karan's unpaid call money (₹ 50,000) can be adjusted fully from the entitled dividend amount of ₹ 50,000/-.

- (d) As per the provisions of Section 133 of the Indian Contract Act, 1872, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation

- (e) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that 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".

(i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30<sup>th</sup> day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).

(ii) **Transfer of unpaid or unclaimed dividend:** As per the provisions of 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, to any shareholder entitled to the payment of the 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 that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28<sup>th</sup> October, 2018 to 3<sup>rd</sup> November, 2018 (both days inclusive).

## Question 2

- (a) (i) CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

- (1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

- (2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company? **(4 Marks)**
- (ii) Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of ₹ 1,20,000 (face value ₹ 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd. **(2 Marks)**
- (b) State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies? **(6 Marks)**
- (c) Mr. Muralidharan drew a cheque payable to Mr. Vyas or order. Mr. Vyas lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forged the signature of Mr. Vyas and endorsed it to Mr. Parshwanath as the consideration for goods bought by him from Mr. Parshwanath. Mr. Parshwanath encashed the cheque, on the very same day from the drawee bank. Mr. Vyas intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank. **(4 Marks)**
- (d) Mr. S Venkatesh drew a cheque in favour of M who was sixteen years old. M settled his rental due by endorsing the cheque in favour of Mrs. A the owner of the house in which he stayed. The cheque was dishonoured when Mrs. A presented it for payment on grounds of inadequacy of funds. Advise Mrs. A how she can proceed to collect her dues. **(4 Marks)**

### Answer

- (a) (i) (1) As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.
- As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.
- (2) Section 139(2) states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.
- Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

- (ii) As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 (as prescribed under the *Company (Audit and Auditors) Rules, 2014*).

In the given instance, CA Shyam is not disqualified to be appointed as a statutory auditor in M/s Cool Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

- (b) **Acceptance of deposit by company from its members:** As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—

- (a) By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- (c) Depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as “deposit repayment reserve account”;
- (d) Providing such deposit insurance in such manner and to such extent as may be prescribed;
- (e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- (f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

#### Exemptions to Private Limited Companies

In case of private company- Points (a) to (e) above shall not apply to private Companies-

- (A) which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:-
  - (a) It is not an associate or a subsidiary company of any other company;
  - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
  - (c) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

#### (c) **Cheque payable to order** [Section 85 of the Negotiable Instruments Act, 1881]

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to "Mr. Vyas or order". It was lost and Mr. Vyas was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Parshwanath, who encashed the cheque from the drawee bank. After few days, Mr. Vyas intimated about the theft of the cheque, to the drawee bank, by which time, the drawee bank had already made the payment.

According to above stated section 85, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature of Mr. Vyas is forged, the banker is protected and is discharged. The true owner, Mr. Vyas, cannot recover the money from the drawee bank in this situation.

- (d) **Capacity to make, etc., promissory notes, etc.** (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

However, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

As per the facts given in the question, Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. Mrs. A can, thus, proceed against Mr. S Venkatesh to collect her dues.

### Question 3

- (a) *What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act, 2013.* **(2 + 4 = 6 Marks)**
- (b) (i) *A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of ₹ 11 crores and a turnover of ₹ 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.* **(3 Marks)**
- (ii) *Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.* **(3 Marks)**
- (c) *Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897.* **(4 Marks)**
- (d) *Write short note on:*
- (i) *Provision*
- (ii) *Explanation,*
- with reference to interpretation of Statutes, Deeds and Documents.* **(4 Marks)**

### Answer

- (a) **Shelf prospectus** – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression “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 issue of a further prospectus.



Provisions relating to issue of Shelf-prospectus:

- (1) **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-
    - (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
    - (ii) 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.
  - (2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing 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, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:
  - (3) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.
  - (4) **Memorandum together with the shelf prospectus shall be deemed to be a prospectus:** Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.
- (b) (i) **Filing of financial statements in XBRL Mode**
- As per Rule 3 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015*, the following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-
- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
  - (ii) companies having paid up capital of five crore rupees or above;
  - (iii) companies having turnover of one hundred crore rupees or above;

- (iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

**(ii) Resolutions requiring special notice [Section 115]**

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding ₹ 5,00,000/- has been paid-up. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

**(c) Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:**

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (1) **Publish of proposed draft rules/ bye - laws:** The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) **To publish in the prescribed manner:** The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) **Notice annexed with the published draft:** There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) **Consideration on suggestions/objections received from other authorities:** The

authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

- (5) **Notified in the official gazette:** The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.
- (d) (i) **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

- (ii) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

#### Question 4

- (a) *KMN Ltd. scheduled its annual general meeting to be held on 11<sup>th</sup> March, 2018 at 11:00 A.M. The company has 900 members. On 11<sup>th</sup> March, 2018 following persons were present by 11:30 A.M.*
- (1) *P1, P2 & P3 shareholders*
  - (2) *P4 representing ABC Ltd.*
  - (3) *P5 representing DEF Ltd.*
  - (4) *P6 & P7 as proxies of the shareholders*
    - (i) *Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.*
    - (ii) *What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?*

- (iii) *In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.*
- (iv) *What happens if there is no Quorum in the Adjourned meeting?* **(4 Marks)**
- (b) *'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.* **(4 Marks)**
- (c) *What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement?* **(4 Marks)**
- (d) (i) *Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.* **(4 Marks)**
- (ii) *Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.* **(2 Marks)**
- (e) *'Repeal' of provision is different from 'deletion' of provision. Explain.* **(2 Marks)**

**Answer**

- (a) 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 KMN 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.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

**(b) Restriction on voting rights [Section 106 of the Companies Act, 2013]**

According to the said Section:

- (1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
- (2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

**(c) According to section 2(40) of the Companies Act, 2013, Financial statement in relation to a company, includes—**

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement.

- (d) (i) **Mischieve Rule:** Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

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.

It enables consideration of four matters in construing an Act:

- (1) what was the law before the 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.

- (ii) **Dictionary Definitions:** First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in '*pari materia*' will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

- (e) In *Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji*, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all inchoate rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

#### Question 5

- (a) *Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.* **(6 Marks)**
- (b) *Discuss the provisions relating to private placement of shares under the Companies Act, 2013.* **(5 Marks)**

- (c) Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30<sup>th</sup> September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct. **(3 Marks)**
- (d) What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872. **(3 Marks)**
- (e) Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹ 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar? **(3 Marks)**

**Answer**

- (a) According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which,-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

As per the Rule given in the *Companies (Specification of Definitions Details) Rules, 2014*, the term “**electronic mode**”, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business

through data interchange in India even though the company has no place of business established in India.

- (b) **“Private placement”** means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

**Requirements of offer or invitation for subscription of securities on private placement: [Section 42]**

- (1) **Issue of private placement offer letter:** According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.
- (2) **Offer/invitation to number of persons:** The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the *Companies (Prospectus and Allotment of Securities) Rules, 2014*.

**Offer/ invitation made to more than the prescribed number of persons :** If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

- (3) **No issue of fresh offer/ invitation:** No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
  - (i) have been completed, or
  - (ii) that offer or invitation has been withdrawn, or
  - (iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)
- (4) **Offer / invitation treated as public offer:** Any offer or invitation not in compliance



with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

- (5) **Payment of amount:** All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- (6) **Time for allotment of securities:** A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)

**Default in allotment of securities:** Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

**Separate Bank Account:** Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

- (a) for adjustment against allotment of securities; or
  - (b) for the repayment of monies where the company is unable to allot securities.
- (7) **Offers made to the persons whose name is recorded :** All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)
- (8) **No publication required:** No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.
- (9) **Filing with the registrar:** Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

- (10) In contravention of the section:** If a company makes an offer or accepts monies in contravention of this section-

Persons liable	Penalty
Company, Promoters and Directors	<ul style="list-style-type: none"> <li>May extend to the amount involved in the offer or invitation, or</li> </ul>
	<ul style="list-style-type: none"> <li>Two crore rupees- whichever is higher</li> </ul>
Company	<ul style="list-style-type: none"> <li>Shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.</li> </ul>

- (c) As per the provisions of Section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed within the time as specified, under section 403.

In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct.

- (d) As per the provisions of section 168 and 169 of the Indian Contract Act, 1872,
- (i) The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner. But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.
- Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.
- (ii) The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:
- when the article is in danger of perishing and losing the greater part of the value or
  - when the lawful charges of the finder amounts to two-third or more of the value of the article found.

- (e) According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

#### Question 6

- (a) *The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.* (6 Marks)
- (b) *Explain the conditions and the manner in which a company may issue Global Depository Receipts in a foreign country.*

#### OR

*What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.* (6 Marks)

- (c) *Azar consigned electronic goods for sale to Aziz. Aziz employed Rahim a reputed auctioneer to sell the goods consigned to him through auction. Aziz authorized Rahim to receive the proceeds and transfer those proceeds once in 45 days. Rahim sold goods on auction for ₹ 2,00,000 but before transferring the proceeds of the auction, became insolvent. Assess the liability of Aziz according to the provisions of the Indian Contract Act, 1872.* (3 Marks)
- (d) *What are the circumstances under which a bill of exchange can be dishonoured by non-acceptance? Also, explain the consequences if a cheque gets dishonoured for insufficiency of funds in the account.* (5 Marks)

#### Answer

##### (a) Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

**Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)**

- (i) **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
  - (ii) **Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
  - (iii) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
- (b) The *Companies (Issue of Global Depository Receipts) Rules, 2014*, lays the conditions and the manner in which a company may issue depository receipts in a foreign country.

**Conditions for issue of depository receipts–**

- (1) **Passing of resolution:** The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
- (2) **Approval of shareholders:** The Company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting:
- (3) **Depository receipts shall be issued by an overseas depository bank:** The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.
- (4) **Compliance with all the provisions, schemes, regulations etc.:** The Company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.

- (5) **Compliance report to be placed at the meeting:** The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts:

**Manner for issue of depository receipts –**

- (1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.
- (2) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.
- (3) The underlying shares shall be allotted in the name of the overseas as depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

**OR**

- (b) **Time limit for registration of charge with the registrar:** According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [*The companies (Registration of charges) Rules, 2014*].

Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.

**Place of keeping company's register of charges:** According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

**Inspection of the register of charges and instrument of charges:** The register of charges and instrument of charges, shall be open for inspection during business hours—

- (a) by any member or creditor without any payment of fees; or
  - (b) by any other person on payment of such fees as may be prescribed,
- subject to such reasonable restrictions as the company may, by its articles, impose.

- (c) According to section 195 of the Contract Act, 1872, in selecting an agent (substituted) for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, while selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

Hence, if Aziz has exercised same amount of diligence as a man of ordinary prudence would, he shall not be responsible to Azar for the proceeds of the auction.

- (d) As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.

**Dishonour by non-acceptance may take place in any one of the following circumstances:**

- (i) When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
- (ii) When one of several drawees, not being partners, makes default in acceptance;
- (iii) When the drawee makes a qualified acceptance;
- (iv) When presentment for acceptance is excused and the bill remains unaccepted; and
- (v) When the drawee is incompetent to contract.

**Dishonour of Cheque for insufficiency, etc. of funds in the account:** As per section 138 of the Negotiable Instruments Act 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.