

## PAPER – 2 : CORPORATE & OTHER LAWS

Question No. 1 is compulsory.

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

### Question 1

- (a) (i) Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.
- (ii) SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.
- (iii) Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
- (A) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
- (B) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? **(6 Marks)**
- (b) Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 :
- (i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:
- (ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for ₹ 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
- (iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.
- (6 Marks)**
- (c) (i) Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?
- (ii) Whether a Pawnee has a right to retain the goods pledged. **(4 Marks)**

- (d) 'A' draws a bill amounting ₹ 5,000 of 3 month's maturity period on 'B' but signs it in the fictitious name of 'C'. Bill is payable to the order of 'C' and it is duly accepted by 'B'. 'D' obtains the bill from 'A' and thus becomes its 'Holder-in-Due course'. On maturity 'D' presents bill to 'B' for payment. Is 'B' bound to make the payment of the bill? Examine it referring to the provisions of the Negotiable Instruments Act, 1881. **(3 Marks)**

**Answer**

- (a) (i) 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.

According to Rule 2(1)(c)(iv) of the *Companies (Registration of Foreign Companies) Rules, 2014*, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Looking to the above description, it can be said that being involved in telemarketing in India having its main server for online business outside India, Herry Limited will be treated as foreign company.

- (ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

SKP Limited is advised to follow the above procedure accordingly.

[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part (i) of the question]

- (iii) **As per** Rule 3 & 4 of the *Companies (Incorporation) Rules, 2014* following the answers :

- (A) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.
- (B) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

- (b) (i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner 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.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

- (ii) 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 ₹ 5 Lacs.

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for ₹ 6 lacs.

- (iii) 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. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

- (c) (i) **Pledge by person in possession under voidable contract** [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

- (ii) **Right of retainer** [Section 173 of the Indian Contract Act, 1872]: Yes, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.
- (d) **Bill drawn in fictitious name:** The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious.

Accordingly, in the instant case, B cannot avoid payment by raising the plea that the drawer, C is fictitious. The only condition is that the signature of C as drawer and as endorser must be in the same handwriting.

Therefore, in the given case, B is bound to make the payment of the bill to D.

#### Question 2

- (a) *Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:*
- (i) *Resolution to increase the Authorised share capital of the company.*
  - (ii) *Appointment and fixation of the remuneration of Mr. Prateek as the auditor.*
- A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013. (4 Marks)*
- (b) (i) *Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?*
- (ii) *State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.*
- (iii) *Whether a Company can keep books of Accounts in electronic mode accessible only outside India. (6 Marks)*
- (c) *Bhupendra borrowed a sum of ₹3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency.*
- Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful. (4 Marks)*
- (d) *Mr. X is the payee of an order cheque. Mr. Y steals the cheque and forges Mr. X signature and endorses the cheque in his own favour. Mr. Y then further endorses the cheque to Mr. Z, who takes the cheque in good faith and for valuable consideration.*

*Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881 and also state whether Mr. Z can claim the privileges of holder-in-due course.*

**(3 Marks)**

**Answer**

- (a) Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
- (i) every director and the manager, if any;
  - (ii) every other key managerial personnel; and
  - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

- (b) (i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

- (ii) Persons responsible to maintain books

As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

- (iii) A Company have has the option of keeping such books of account or other relevant papers in electronic mode as per *Rule 3 of the Companies (Accounts) Rules, 2014*. According to such Rule,

- (a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
- (b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- (c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

- (c) According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the

subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

- (d) Forgery confers no title and a holder acquires no title to a forged instrument. Thus, where a signature on the negotiable instrument is forged, it becomes a nullity. Therefore, cheque further endorsed to Mr. Z, is not valid.

Since a forged instrument is a nullity, therefore the property in the such instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course. Therefore, Mr. Z, acquires no title on the cheque.

### Question 3

- (a) *Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard.* **(5 Marks)**
- (b) *Referring to the provisions of the Companies Act, 2013, examine the validity of the following :*
- (i) *The Board of Directors of Anand Ltd. proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.*
- (ii) *Whether a Company can declare dividend for the financial year in which it incurred loss.* **(5 Marks)**
- (c) *State whether the following alteration is material alteration under the provisions of the Negotiable Instruments Act, 1881. ·*
- A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument.* **(4 Marks)**
- (d) *How will you interpret the term "Instrument" used in a statutes?* **(3 Marks)**

### Answer

- (a) **Order of the Tribunal:** According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents

or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit.

However before making any order-

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
  - (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
- (b)** (i) Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of Anand Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

- (ii) As per Second Proviso to Section 123 (1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the *Companies (Declaration and Payment of Dividend) Rules, 2014*.
- (c)** 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 from that which it originally spoke or which changes the legal identity or character of the instrument.



In the said case, 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) **‘Instrument’**: In common parlance, ‘instrument’ means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that ‘instrument’ includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

#### Question 4

- (a) *The Board of Directors of Chandra Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.* **(4 Marks)**
- (b) *Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;*
- (i) ₹ 5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
  - (ii) ₹ 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.
  - (iii) Amount of ₹ 3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother. **(6 Marks)**
- (c) *What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.* **(4 Marks)**
- (d) *At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'?* **(3 Marks)**

**Answer**

- (a) As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Directors of Chandra Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

- (b) **Deposit:** According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) (c) of the *Companies (Acceptance of deposit) Rules, 2014*, in consultation with the Reserve bank of India.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the *Companies (Acceptance of deposit) Rules, 2014*, following shall be the answers-

- (i) In the first case, where ₹ 5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.
- (ii) In the second case, ₹ 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest

bearing security deposit.

- (iii) In the third case, amount of ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
- (c) As per Section 3(22) of the General Clauses Act, 1897, the term “good faith” means a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;

The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

- (d) **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) '*Optima Legum interpret est consuetude*' (the custom is the best interpreter of the law); and
- (ii) '*Contemporanea exposito est optima et fortissinia in lege*' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and

documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea exposition* to interpret not only ancient but even recent statutes in India.

#### Question 5

- (a) X Ltd. issued a notice on 1<sup>st</sup> Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them.

The last date to accept the offer was 15<sup>th</sup> Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.? **(5 Marks)**

OR

- (a) XYZ unlisted company passed a special resolution in a general meeting on January 5<sup>th</sup>, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15<sup>th</sup>, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

(i) Decide, whether the company's proposal is in order.

(ii) What will be your answer if buy back offer date is revised from January 5<sup>th</sup>, 2019 to January 25<sup>th</sup> 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above? **(5 Marks)**

- (b) DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges. **(5 Marks)**

- (c) 'C' advances to 'B', ₹ 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ₹ 2,00,000 without knowledge of 'A'. C cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth ₹80,000, under the Indian Contract Act, 1872. **(4 Marks)**

- (d) Define the term "Affidavit" under the General Clauses Act, 1897. **(3 Marks)**

**Answer**

- (a) According to section 62 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, such shares shall be offered—
- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-
- (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
  - (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
  - (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1<sup>st</sup> Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15<sup>th</sup> Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

**Or**

- (a) (i) In the instant case, the company's proposal is not in order due to the following reasons:
- (A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

- (B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).
  - (C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to section 68(2)]
  - (D) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
- (ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**(b) Intimation regarding Satisfaction of Charge**

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

- (c) Surety's right to benefit of creditor's securities:** According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In the instant case, C advances to B, ₹ 2,00,000 rupees on the guarantee of A. C has also taken a further security for ₹ 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. ₹ 80,000 and will remain liable for balance ₹ 1,20,000.

- (d) **“Affidavit”** [Section 3(3) of the General Clauses Act, 1897]: ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.