

CA – Inter (New Syllabus)
Paper – 2 “Corporate and Other Laws”

M.M.: 35**Time allowed: 60 Mins.****Instructions: All Questions of Division A are compulsory.**

Division A – Multiple Choice Questions		Marks
Case Scenario 1		
Q.1	(c) On the basis of net worth of the company.	2
Q.2	(a) The net worth of Sai Ram Limited during the financial year 2021-22 was ₹ 520 crore.	2
Q.3	(d) Sai Ram, Hari Om, Bindu and Roshan	2
General MCQs		
Q.4	(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.	1
Q.5	(b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.	1
Q.6	(d) 180 days from the closure of the financial year.	1
Q.7	(a) Special notice is required	1

DIVISION B – DESCRIPTIVE QUESTION**Q. No. 1 is compulsory****Attempt any four questions from the Rest**

- Q.1 (a) Validity of appointment of auditor:**
- As per Sec. 141(3)(d) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company, if he, or his relative or partner:
- (i) 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:
Provided that the relative may hold security or interest in the company of face value not exceeding ₹1,00,000;
 - (ii) is **indebted** to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in **excess of ₹5,00,000**; or
 - (iii) has given a **guarantee or provided any security** in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹1,00,000.
- Conclusion:** Based on the above stated provision, following conclusions may be drawn:
- (i) As the face value of shares held in P Ltd. by Mrs. Q, wife of Mr. X does not exceed ₹ 1 lakh, appointment of XYZ & Co. as auditor in P Ltd. is valid.
 - (ii) As Mrs. Q, has given guarantee in relation to a loan taken by G from P Ltd. exceeds ₹ 1 lakh, XYZ & Co. is disqualified to be appointed as auditor and hence appointment is invalid.
 - (iii) P Ltd. holds 1/4th of the paid-up capital of Z Ltd., Z Ltd. is associate company of P Ltd. As Mrs. Q is indebted to Z Ltd. exceeds ₹ 5 lakh, XYZ & Co. is disqualified to be appointed as auditor and hence appointment is invalid.

(b) Penalty for non-payment of dividend:

- Sec. 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.
- In the instant case, A Ltd. has failed to communicate to the shareholder Mr. B about the discrepancy (as per bank, account number as given by Mr. B doesn't tally with the records of the bank) which led to non-compliance of his direction regarding payment of dividend.

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Conclusion: Penal provisions u/s 127 will be attracted.

Q.2 Declaration of Dividend out of Reserves:

As per 2nd proviso to Sec. 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 shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014:

Condition I: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year.

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Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

Condition II: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

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Paid-up capital + Free reserves	= ₹ 100 lakhs + ₹ 75 lakhs
	= ₹ 175 lakhs
10% thereof	= ₹ 17.50 lakhs

Condition III: The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

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Condition IV: The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Accumulated Reserves	= ₹ 75 lakhs
Proposed withdrawal	= ₹ 17.50 lakhs
Balance of Reserves	= ₹ 57.50 lakhs

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This is more than 15% of paid-up capital (*i.e.* 15% of ₹ 100 lakhs) *i.e.* ₹ 15 lakhs.

Conclusion: AB Limited is allowed to declare dividend to the extent of ₹ 29.50 lakhs (₹ 17.50 lakhs out of reserves and ₹ 12 lakhs out of current year profits). Proposal to pay dividend of ₹ 30 lakhs is not valid.

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Q.3 Filing of accounts with the Registrar:

- As per 1st proviso to Sec. 137(1) of the Companies Act, 2013, where the financial statements are not adopted at AGM or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

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- As per 2nd proviso to Sec. 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed. 1.5
- In the given case, the accounts of Moon Ltd. were adopted at the adjourned AGM held on 5th October, 2022 and filing of financial statements with Registrar was done on 25th October, 2022 *i.e.* within 30 days of the date of adjourned AGM. But Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the AGM held on 31st August, 2022.

Conclusion: Moon Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar. 1

Q.4 Directors' Responsibility Statement: 4

According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that: (1 Mark for 1 Point)

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Q.5 Removal of Auditor:

- Sec. 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. U/s 140(1) the auditor appointed u/s 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner: 1
Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.
- Therefore, in terms of Sec. 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term: 2
 - (a) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with prescribed fees.
 - (b) The application shall be made to the Central Government within 30 days of the resolution passed by the Board.
 - (c) The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

Conclusion: Decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

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Q.6 Companies requiring to appoint internal auditors:

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

- (1) every listed company;
- (2) every unlisted public company having-
 - (A) paid up share capital of ₹ 50 crore or more during the preceding financial year; or
 - (B) turnover of ₹ 200 crore or more during the preceding financial year; or
 - (C) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year; or
 - (D) outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year.

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