

PAPER – 2: CORPORATE & OTHER LAWS

Suggested Answers – SEP. 2024 Exams

PART – I

Case Scenario – I

Mr. S, a well experienced technocrat in the field of manufacturing of computer hard discs and mother board. He resigned from his job and wished to form an LLP with the object of manufacturing and trading of Computer hardware. He wanted to include his close friends Mr. A, Mr. B, and Mr. C who are very familiar in the same field and worked in the foreign companies also.

All three friends had accepted the invitation of Mr. S to be partners of the LLP. Mr. S wanted to ensure whether all the three friends are resident of India and requested them to provide the details of their stay in India. During the previous financial year, Mr. A has stayed in India for a period of 170 days, Mr. B stayed in India for 110 days and Mr. C stayed in India for 100 days. All the partners had given their consent to act as designated partners. He applied for the reservation of desired name to the registrar and also paid the prescribed fees.

Based on the above facts, answer the following questions: (Q. No. 1 to Q. No. 3)

1. In how many days, a Limited Liability Partnership shall file with the Registrar, the particulars of every individual who has given his consent to act as designated partner?
 - (a) Within thirty days of incorporation of LLP
 - (b) Within thirty days of his appointment
 - (c) After forty five days of incorporation of LLP
 - (d) After sixty days of his appointment **(2 Marks)**
2. The name applied for has been approved by the Registrar. The approved name of LLP shall be valid for a period of _____ from the date of intimation by the Registrar.
 - (a) 2 months
 - (b) 1 month
 - (c) 3 months
 - (d) 6 months **(2 Marks)**
3. Which of the following combinations of partners, if appointed as designated partners, will not be in accordance with the provisions laid down by LLP Act, 2008?
 - (a) Mr. A, Mr. B and Mr. C
 - (b) Mr. B and Mr. C
 - (c) Mr. A and Mr. C
 - (d) Mr. A and Mr. B **(2 Marks)**

Case Scenario – II

Progressive Management College have introduced a Global Management Diploma Course which is of 12 months duration. Out of 12 months, 11 months studies are held in India and rest of 1 month is earmarked for foreign tour. Rudra Pratap is the Principal of the college. After taking requisite permission from the competent Ministry, the cultural tour programme was chalked out and the team visited Malaysia, Singapore, Australia and New Zealand.

Rudra Pratap's daughter Payal got admission in a medical college situated in California, United States of America. For fee and other expenses, Payal needs USD 2,25,000. Rudra Pratap contacted his banker to know the procedure for availing of foreign exchange and the authority to whom he shall apply. His banker properly guided all the relevant procedures for availing of the foreign exchange.

Rudra Pratap's brother Sourya Pratap went to UK some years ago, where he joined a company in managerial position. He intermittently visits to India and maintains a Non-Resident Special Rupee Scheme Account (NRSR) in Mumbai. He wanted to make remittance of interest earned in the NRSR Account and asked his bankers for the required formalities.

Based on the above facts, answer the following questions: (Q. No. 4 to Q. No. 6)

4. The remittance of foreign exchange for arranging of cultural tour for the students is an example of:
- (a) Capital Account Transactions
 - (b) Current Account Transactions
 - (c) Hybrid Transactions
 - (d) Amortised Transactions **(2 Marks)**
5. For the purpose of cultural tours, approval of which Ministry is required to be obtained?
- (a) Ministry of Human Resources Development
 - (b) Ministry of External Affairs
 - (c) Ministry of Home Affairs
 - (d) Ministry of Commerce and Industry **(2 Marks)**
6. For availing foreign exchange for studying abroad, which of the following option is correct:
- (a) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad is prohibited.
 - (b) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad requires prior approval of Government of India.
 - (c) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad requires prior approval of RBI.
 - (d) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad do not require prior approval of RBI. **(2 Marks)**

Case Scenario – III

ABC Publications Limited accepted deposits from the public to the tune of ₹ 70 Lakhs on 1st May 2021, for a period of 36 months at an interest rate of 10% per annum. The repayment would be made on 30th April 2024. It has complied with all the statutory requirements for the acceptance of deposits by a Public Limited Company.

One of the depositors Mr. Y was in urgent need of money as his son wanted to pursue his higher education abroad. His total deposit with ABC Publications Limited was ₹ 10 lakhs. On 1st June 2022, he sent his request to the company asking for premature repayment of his deposit along with interest.

Another depositor Mr. U had deposited ₹ 6 lakhs in his name. On 18th September 2022, he sent an application to the company to change the name on his deposit and make it a joint holding in the names of himself, his wife and two children. The company is contemplating the requests received from its depositors.

In addition to the deposits received from the public, the Company had also raised funds by amount received from a Public Sector Bank, by issue of bonds and debentures and amounts against issue of commercial papers which were issued according to the guidelines issued by the Reserve Bank of India. On the basis of the given facts, and by applying the applicable provisions of the Companies Act, 2013 and the Rules therein, choose the correct answer of the following questions: (Q. No. 7 to Q. No. 9)

7. The Banker of ABC Publications Limited wanted a list of deposits accepted by the Company. Advise the Company on what among the following constitute deposit:
- (a) Amount raised through bonds and debentures
 - (b) Any non-interest-bearing amount received and held in trust
 - (c) Amount received from Public
 - (d) Amount raised through the issue of commercial paper as per RBI guidelines and amount raised through bonds and debentures **(2 Marks)**
8. Advise ABC Publications Limited regarding the amount and the interest that can be repaid to Mr. Y:
- (a) The Company cannot make premature repayment of the deposits.
 - (b) The Company can prematurely repay the deposit along with interest @ 10% for a period of 13 months (1st May 2021 to 31st May 2022)
 - (c) The Company can prematurely repay the deposit along with interest @9% for a period of 13 months (1st May 2021 to 31st May 2022)
 - (d) The Company can prematurely repay the deposit along with interest @ 9% for a period of 11 months (1st May 2021 to 31st March 2022) **(2 Marks)**
9. Advise ABC Publications Limited regarding the request of Mr. U:
- (a) Mr. U cannot change his deposit to joint holding.
 - (b) The deposits can be held jointly only by Mr. U and his wife.
 - (c) The deposits can be held jointly by Mr. U, his wife and two children.
 - (d) The deposits can be held jointly by Mr. U and any two members only. **(2 Marks)**

CASE SCENARIO – IV

Combat Gaming Limited is a company incorporated outside India with a place of business in Rajasthan. To improve its gaming software, the company wanted to apply Artificial Intelligence technology. In order to raise more funds to meet out the investment cost, the company decided to issue shares. It issued prospectus of the company which was properly dated and signed according to the provisions of the Companies Act, 2013 and delivered them to the Registrar of Companies on 16/08/2023. The Registrar on verification of the documents found that the particulars in the prospectus was incomplete and issued a notice to the company saying that the prospectus is invalid. Hence, the directors scrutinized the documents and during the scrutiny it was observed by the CFO that there was a mistake in one of the documents delivered to the Registrar and hence altered that on 29th September 2023. Analyse, based on the above scenario and answer the following questions: (Q. No. 10 to Q. No. 12)

10. Combat Gaming Limited has to deliver the required documents along with the appropriate fees to___
- (a) The Registrar of Companies, Rajasthan
 - (b) The Comptroller and Auditor General Office, New Delhi
 - (c) The Registrar of Companies, New Delhi
 - (d) The Company Law Board, New Delhi **(2 Marks)**
11. According to the Companies (Registration of Foreign Companies) Rules, 2014, of the Companies Act, 2013, which of the following documents shall not be annexed to the prospectus?
- (a) Any consent to the issue of the prospectus required from any person as expert;
 - (b) Statement of preliminary expenses;
 - (c) A copy of contracts for appointment of Managing Director or Manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
 - (d) A copy of underwriting agreement. **(2 Marks)**
12. Combat Gaming Limited has made alteration in documents delivered to the Registrar, they shall intimate to Registrar of Companies by_____
- (a) 29th October
 - (b) 13th November
 - (c) 28th November
 - (d) 9th October **(2 Marks)**
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13. With reference to the provisions of the General Clauses Act, 1897, in all Legislations and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken:
- (a) To exclude female
 - (b) To exclude boy child
 - (c) To exclude girl child
 - (d) To include females **(2 Marks)**
14. Super Brain Coaching Limited was engaged in offline coaching of students for various competitive examinations. It was one of the pioneer in its field. It suffered losses due to various social and government restrictions imposed on study centres. On account of this, it defaulted in the repayment of term loan for the first two quarters of the financial year 2023-24. However, Super Brain Coaching Limited adapted itself to the changing circumstances and shifted to online mode of coaching and revived its financial conditions. On 31st December 2023, it cleared all the dues and regularized the term loan. Super Brain Coaching Limited wants to issue equity shares with differential rights. When can the issue be made?
- (a) On or after January 1st 2029
 - (b) On or after April 1st 2029
 - (c) On or after April 1st 2027
 - (d) On or after January 1st 2027 **(2 Marks)**

15. An Act has been passed by the government and though sufficient time has elapsed since the Act was passed, it has not been brought into force by the Government.

Which of the following is correct in the light of the provisions of the General Clauses Act, 1897?

- (a) The court can issue a mandamus with a view to compel the government to bring the Act into operation on a particular day.
- (b) The court can through a writ direct the government to consider the question as to when the Act should begin to operate.
- (c) The court can publish a date in Official Gazette as an effective date for enforcement of the Act.
- (d) The court cannot direct the government to consider the question as to when Act should begin to operate.

(2 Marks)

Answers:

1. (B) Within thirty days of his appointment
2. (C) 3 Months
3. (B) Mr. B and Mr. C
4. (B) Capital Account Transactions
5. (A) Ministry of Human Resources Development
6. (D) The transaction of withdrawal of foreign exchange of USD 2,25,000 for studying abroad do not require prior approval of RBI.
7. (C) Amount received from Public
8. (D) The Company can prematurely repay the deposit along with interest @9% for a period of 11 months (1st May 2021 to 31st March 2022)
9. (D) The deposits can be held jointly by Mr. U and any two members only.
10. (C) The Registrar of Companies, New Delhi
11. (B) Statement of preliminary expenses
12. (A) 29th October
13. (D) To include females
14. (B) On or after April 1st 2029
15. (B) The court can through a writ direct the government to consider the question as to when the Act should begin to operate.

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PART - II

Question No. 1 is compulsory.

Attempt any four questions from the remaining five questions.

Question 1

(a) SAB Health Products Limited issued equity shares worth ₹ 5,00,00,000 (5,00,000 equity shares of ₹ 100 each) and it was fully subscribed and partly paid at ₹ 50 each. The company made a call to all its subscribers to pay a sum of ₹ 30 for each share held by them. Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid. Is his claim justified? Another shareholder Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him. Referring to the provisions of the Companies Act, 2013 and Rules made there under, examine whether the directors of SAB Health Products Limited permitted to do so? **(5 Marks)**

(b) (i) M/s Right Trading Limited is a company engaged in trading of automobile spare parts. During the current financial year 2024-25, Mr. J the CFO retired due to bad health. The Company appointed Mr. C as the new CFO. On verification of the financial statements and statutory returns of the Company, Mr. C advised the Board of M/s Right Trading Limited to revise the financial statements for the years 2021-22.

Examine with reference to the applicable provisions of the Companies Act, 2013. Whether M/S Right Trading Limited can do so? **(3 Marks)**

(ii) M/s DEF is conducting the audit of M/s Right Trading Limited for the past 9 years. Now due to the requirement of Rotation of Auditors, M/s DEF is going to retire at the upcoming AGM and in its place M/s XYZ will be appointed as the Auditor of M/s Right Trading Limited. One of the partner Mr. F, who was in charge of the certification of the financial statements of the company retired from the firm of M/s DEF and joined the firm of M/s XYZ.

Examine, considering the provisions of the Companies Act, 2013 about the validity of the appointment of M/s XYZ. **(2 Marks)**

(c) Ms. Rose was an Indian citizen who got a job in a software company in the USA. She went to USA and stayed there for 12 years. During her stay, she purchased a house in USA for her residence. Then due to some personal issues she moved back to India and joined a software company in India. As she had moved back to India, she let out her house in USA and deposited the rent in her account in USA. Out of that amount, she purchased another house in USA.

Based on the above facts, answer the following referring to the provisions of the Foreign Exchange Management Act, 1999.

(i) Whether Ms. Rose can purchase the house in USA and continue to retain it even after returning to India?

(ii) Whether Ms. Rose can purchase another house in USA after returning to India? **(4 Marks)**

Answer:

(a) Calls in Advance:

As per Sec. 50 of Companies Act, 2013, a company may, if so, authorised by its articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up. Interest can be paid on such advance, if permitted by article.

As per Sec. 50 of Companies Act, 2013, a company if so authorised by article, may be permitted to pay dividends in proportion to the amount paid-up on each share.

In the given case, Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid.

Conclusion: Mr. GH claim for interest on calls in advances will be justified if permitted by Articles of Company. However, his claim for dividend in respect of advance money paid is not justified.

Calls shall be on a Uniform Basis:

As per Sec. 51 of Companies Act, 2013, calls shall be made on a uniform basis on all shares that are falling under the same class.

A call can't be made on some of the members only, unless they constitute a separate class of shareholders.

In the given case, Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him.

Conclusion: Directors are not permitted to called upon Mr. LK the entire amount due; only the first call can be demanded.

(b) (i) Voluntary revision of financial statements:

Sec. 131 of the Companies Act, 2013, deals with the provisions relating to voluntary revision of financial statements. Accordingly, if it appears to the directors of a company that:

- (a) the financial statement of the company; or
- (b) the report of the Board,

do not comply with the provisions of Sec. 129 or Sec. 134, they may prepare revised financial statement or a revised report in respect of any of the 3 preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.

In the given case, financial statements for the year 2021-22 needs to be revised which falls within 3 preceding financial years, hence, Right Trading Limited can do so, in compliance of provisions as stated u/s 131.

(ii) Appointment and Rotation of Auditor:

As per Rule 6 of the Companies (Audit & Auditors) Rules, 2014, for the purpose of rotation of auditors, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Conclusion: Appointment of M/s XYZ as auditor of M/s Right Trading Limited is not valid.

(c) (i) Purchase of First House in USA:

Sec. 6(4) of the FEMA, 1999 provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Ms. Rose purchased the first house when she residing in USA and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

(ii) Purchase of Second House:

After returning to India and becoming the resident in India, Ms. Rose cannot buy another property in USA as mentioned in Section 6(4) of the FEMA.

Question 2

- (a)** Stuti Ceramic Pvt. Ltd. (SCPL) manufactures crockery items which are predominantly used only by the domestic household customers. Now the company wants to expand its area of operation to manufacture all types of crockery items and cutlery for the use of big hotels. For this expansion plan, the company needs funds of around ₹ 500 lakh. The company does not want to convert itself from private company to public company since the promoters do not want to dilute their equity stake otherwise the public company have the option to raise the funds through public issue. The company explored the other avenue of raising funds by issue of right shares to the existing shareholders, however only ₹ 100 lakh could be generated. The banks and financial institutions are also reluctant to increase their exposure in the company.

Referring to the provisions of the Companies Act, 2013, advise the SCPL, whether the Company can raise further funds through private placement issue. If so, are there any limit for fresh offer and time limit of allotment of securities? **(5 Marks)**

- (b)** Dolls Toys Limited is having a net-worth of ₹ 310 crores, paid up share capital of ₹ 200 crore, free reserves and security premium of ₹ 110 crore and turnover of ₹ 300 crores. Dolls Toys Limited wants to accept deposits from public other than its members.

(i) Referring to the provisions of the Companies Act, 2013, state whether Dolls Toys Limited is permitted to accept the deposits from public other than its members.

(ii) It is further mentioned that Dolls Toys Limited is in urgent need of funds as one of its contracts is on the verge of completion and it is promising to repay the deposits within a period of four months. Is Dolls Toys Limited permitted to accept deposits with repayment period of 4 months? **(5 Marks)**

- (c)** Referring to the provisions of the General Clauses Act, 1897, answer the following questions:

(i) Whenever a new law is enacted by the Government of India, what shall be its date of coming into force?

(ii) Whenever a new law is enacted to replace the existing law, it repeals the old enactment. Describe the points which shall not have any effect of repeal of the old enactment.

(4 Marks)

Answer:

(a) Private Placement:

A company may make private placement of securities subject to provisions of Sec. 42 of this Act in supplement with those stated under rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014. Private placement means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in Sec. 42.

In the given case, SCPL needs fund of around ₹ 500 lakh; through right issue company is expecting ₹ 100 lakh; banks and financial institutions are reluctant to increase their exposure; company does not want to convert its status from private to public.

Under present circumstance, company can raise funds through private placement offer to a select group of not more than two hundred (200) persons in a financial year, who have been identified by the Board, after passing as special resolution in this regard.

Limit on Fresh Offer:

No fresh offer or invitation u/s 42 shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Time for allotment of securities:

- A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities.
- Where the company is not able to allot the securities within stated period, it shall repay the application money to the subscribers within 15 days from the date of completion of sixty days.
- If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest @ of 12% per annum from the expiry of the sixtieth day.

(b) (i) Acceptance of deposits from public:

As per Sec. 76 of the Companies Act, 2013, a public company, having net worth of not less than ₹ 100 crores or turnover of not less than ₹ 500 crores, can accept deposits from persons other than its members subject to compliance with the requirements provided in Sec. 73(2) and subject to such rules as the Central Government, in consultation with the Reserve Bank of India, prescribe.

Since, Dolls Toys Limited has a net worth of ₹ 310 crores, which is more than the prescribed limit, hence, it cannot accept deposit from public other than its members.

(ii) Acceptance of Deposits with repayment period of 4 months:

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed 36 months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (a) such deposits shall not exceed 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (b) such deposits are repayable only on or after three months from the date of such deposits or renewal.

Hence, Dolls Toys Limited can accept deposits with repayment period of 4 months but such deposits shall not exceed 10% of the aggregate of its paid-up share capital, free reserves and securities premium account, i.e. ₹ 31 Crores.

(c) (i) Coming into operation of enactment:

As per Sec. 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

(ii) Effect of Repeal [Sec. 6 of the General Clauses Act, 1897]:

Where any Central legislation or any regulation made after the commencement of this Act, repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

1. **Revive anything not enforced** or prevailed during the period at which repeal is effected or;
2. **Affect the previous operation** of any enactment so repealed or anything duly done or suffered thereunder; or
3. **Affect any right**, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
4. **Affect any penalty**, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
5. **Affect any inquiry, litigation or remedy** with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Question 3

(a) The paid-up share capital of Star Furnishing Limited is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each as at 31st March, 2024. Out of this, Home Decor Limited is holding 6,00,000 equity shares and the remaining equity shares of 4,00,000 held by others. Simultaneously, Star Furnishing Limited is holding 7% equity shares of Home Decor Limited out of which 2% equity shares are held as a legal representative of a deceased member of Home Decor Limited. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

- (i) Can Star Furnishing Limited make further investment in equity shares of Home Decor Limited during 2024-25?
- (ii) Can Star Furnishing Limited exercise voting rights at the Annual General Meeting of Home Decor Limited?

(5 Marks)

(b) Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ₹ 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.

During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023.

So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.

Further, the company management pleaded that it is the responsibility of the financier i.e. Goodwill Bank to get the charges registered with the Registrar since the registration of charge is to be effected in favour of the Bank and for Banks own benefit, so the NTL is in no way responsible for getting registration or for delayed registration.

In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:

- (i) When trigger point for the registration of charge shall arise,
 - (a) at the time of credit limit sanctioned by the Bank; or
 - (b) at the time of availing of credit limit when cheque was issued by the company?
- (ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd.?

(5 Marks)

(c) Explain the rule which suggests that the 'Plain word requires no explanation' and 'technical words be understood in technical sense only'. (4 Marks)

Answer:

(a) **Subsidiary company not to hold shares in its holding company:**

- The paid-up share capital of Star Furnishing Limited is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, Home Decor Limited is holding 6,00,000 equity shares.
- Hence, Home Decor Limited is the holding company of Star Furnishing Limited and Star Furnishing Limited is the subsidiary company of Home Decor Limited by virtue of Sec. 2(87) of the Companies Act, 2013.
- As per Sec. 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
- However, there are three exceptions to the above-mentioned provisions:
 - (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
 - (b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

The subsidiary company referred to above shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b).

Conclusion: Based on the provisions of Sec. 19 as stated above, following conclusions may be drawn:

- (i) Star Furnishing Limited cannot make further investment in equity shares of Home Decor Limited.
- (ii) Star Furnishing Limited can exercise voting rights at the AGM of Home Decor Limited only in respect of 2% shares held as a legal representative of a deceased member of Home Decor Limited.

(b) Trigger Point for Registration of Charge:

As per Sec. 77(1) of the Companies Act, 2013, it shall be duty of the company creating a charge, to register the particulars of the charge, with the registrar within 30 days of creation of charge, in the prescribed manner.

In the given case, NTL mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ₹ 200 lakh. So, trigger point for the registration of charge shall arise, at the time of credit limit sanctioned by the Bank; not at the time when cheque was issued.

Consequences for Non-Registration of Charge on NTL:

As per Sec. 86 of the Companies Act, 2013, if any company contravenes any provision relating to the registration of charges, the company shall be liable to a penalty of ₹ 5 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action u/s 447.

(c) Rule of Literal Construction:

- Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction. This principle is contained in the Latin maxim “*absoluta sententia expositore non indiget*” which literally means “an absolute sentence or preposition needs not an expositor”. In other words, plain words require no explanation.
- Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

- For example, disclosure of the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in Sec. 102 of the Companies Act, 2013). It has to be interpreted in its broader sense that any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Technical words are to be understood in technical sense:

This point of literal construction is that technical words are understood in the technical sense only.

In construing the word 'practice' in the Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court.

Question 4

- (a) XYZ Limited is a company having a paid-up equity share capital of ₹ 75 crores. Though it was performing well in the recent years it suffered losses in the first and second quarter of the financial year 2023-2024. In order to sustain its image, the Board of Directors declared an interim dividend at the rate of 30% on the paid-up equity share capital on 4/10/2023. The following are the additional information extracted from the books of account for the past 5 Financial Years:

Financial year ending 31 st March	Rate of Dividend declared
2019	20%
2020	15%
2021	15%
2022	15%
2023	30%

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 30% interim dividend. **(5 Marks)**

- (b) M/s Strong Steels Limited Liability Partnership firm was incorporated on 01/04/2010 with ten partners. The LLP had very good business and made considerable profits during the past years. Recently due to obsolete practices, M/s Strong Steels Limited LLP started making loss. Also, M/s Strong Steels Limited LLP did not file its annual returns from 2020-21. Three partners decided that the LLP be wound up by the Tribunal. The remaining partners objected to it. Referring to Section 64 of the Limited Liability Partnership Act, 2008, can the Tribunal pass an order to wound up M/s Strong Steels Limited LEP?

Also state the provisions and penalty for not filling annual return with the Registrar. **(5 Marks)**

- (c) (i) What is the purpose of inclusion of "definitions" of certain words and expressions in the body of any statute?
- (ii) The definition sometimes includes the words 'mean', 'include', 'means and include' and 'to apply to and include'. What is the meaning of such words? **(4 Marks)**

Answer:

(a) Declaration of Interim Dividend:

- As per Sec. 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
- However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
- In the instant case, interim dividend by XYZ Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [*i.e.* $(15+15+30)/3 = 60/3 = 20\%$].

Conclusion: Decision of Board of Directors to declare interim dividend @30% of paid-up equity share capital is not valid.

(b) Circumstances in which LLP may be wound up by Tribunal (Sec. 64 of the LLP Act, 2008):

A LLP may be wound up by the Tribunal:

- (1) if the LLP decides that LLP be wound up by the Tribunal;
- (2) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (3) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (4) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (5) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Case of M/s Strong Steels does not fall under any of the circumstances mentioned above, hence Tribunal will not pass an order for winding up of Strong Steels.

Provisions and Penalty for not filing Annual return with the Registrar (Sec. 35):

Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

Penalty for non-filing of annual return:

- LLP – ₹ 100 per day subject to maximum ₹ 1,00,000
- Every Designated Partners – ₹ 100 per day subject to maximum ₹ 50,000

(c) (i) Purpose of inclusion of Definitions:

The purpose of a definition clause is two-fold:

- (a) to provide a key to the proper interpretation of the enactment, and
- (b) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

(ii) Interpretation of the words “Means” and “Includes” in the definitions:

- When a word is defined to ‘mean’ such and such, the definition is ‘*prima facie*’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
- But where the word is defined to ‘include’ such and such, the definition is ‘*prima facie*’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
- If the word being defined as ‘means and includes’ such and such. In this case, the definition would be exhaustive.
- On the other hand, if the word is defined ‘to apply to and include’, the definition is understood as extensive.

Question 5

- (a)** Sanjana joined a company named as Designers Cloths (I) Ltd. as an Independent Director. In order to know more about the company, she wanted to inspect the books of account and minutes books of the Board Meetings held during the previous three years.

The company is keeping the books of account and other records at its Registered Office, which is at Mumbai whereas Sanjana resides in Kolkata. Therefore, through power of attorney, Sanjana authorised her friend Avantika, who is a Chartered Accountant and does practice in Mumbai, to make an inspection of the books of accounts and minutes books of the meetings of the Board.

Giving the relevant provisions of the Companies Act, 2013 and its Rules, examine, whether Avantika can make inspection on behalf of Sanjana. **(5 Marks)**

- (b)** A, B, C and D are the partners of Alpha LLP and have equal share in the profits and losses of the LLP. A has made an agreement to transfer 70% of his share in the profits of Alpha LLP to his daughter X.

X wanted to access information about the trading transactions of Alpha LLP claiming that she is entitled to the information as she receives a percentage of profits from the LLP. The partners refused to grant her access. Does X have any remedy against the denial according to the provisions of the Limited Liability Partnership Act, 2008? Are the partners correct in denying access to X?

(5 Marks)

- (c)** (i) In a contract of sale, Mr. A fraudulently sold certain unmarketable goods to M. B. Now Mr. A is liable for the fraudulent activity under both The Indian Contract Act, 1872 and the Sale of Goods Act, 1930. State the provision as per the General Clauses Act, 1897 as to whether his offence is punishable under the both the Acts?

(ii) Mr. P bought a car from Mr. G who was his friend. Mr. P did not check the car or test drive it. Whether the purchase made could be said to be made in good faith? Explain with reference to the provisions of the General Clauses Act, 1897. **(4 Marks)**

Answer:

(a) Inspection of Books of Accounts:

- As per Sec. 128(3) of Companies Act, 2013, the books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours.
- In *Vakharia Vs Supreme General Film Exchange CO. Ltd* it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the information obtained by him for any purpose other than the purpose of his principal.
- In the present case, Sanjana, the Independent Director wishes to get the inspection done by Avantika. For this purpose, Sanjana must seek the approval of the Board of Directors without which she will not be allowed to do so.

Conclusion: Avantika can make inspection on behalf of Sanjana if such right of inspection has been approved by the Board of Directors.

(b) Partner's Transferable Interest (Sec. 42):

- The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.
- The transfer of any right by any partner does not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP.
- The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP, or access information concerning the transactions of the LLP.
- In the given case, A (Partner of Alpha LLP) has made an agreement to transfer 70% of his share in the profits of Alpha LLP to his daughter X. X wanted to access information about the trading transactions of Alpha LLP claiming that she is entitled to the information as she receives a percentage of profits from the LLP. The partners refused to grant her access.

Conclusion: X does not have any remedy against the denial as partners refusal is as per law.

(c) (i) Provision as to offence punishable under two or more enactments:

As per Sec. 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. A shall be liable to punished under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930, but shall not be punished twice for the same offence.

(ii) Concept of Good Faith:

- Good Faith in general, is anything done with due care and attention, which is not *mala fide* is presumed to have been done in good faith.
- As per Sec. 3(22) of the General Clauses Act, 1897, 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 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 *mala fide* is presumed to have been done in good faith.
- In the given situation, Mr. P purchased a car from Mr. G carelessly without checking the car or test drive the car. 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.

Question 6

- (a)** Silk Textile Limited is a company which is incorporated in India. It holds two subsidiaries - Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Silk Textile Limited intends to call an Extraordinary General Meeting (EGM) of Silk Textile Limited. During the same time, the Board of Print Limited also wanted to hold an EGM on urgent basis at Dubai. The Chairman with the consent of his Board wanted to hold the EGM of Silk Textile Limited at Dubai so that he can attend both the EGM. But the Company Secretary advised the Chairman that he cannot hold the EGM outside India.

Referring to the provisions of the Companies Act, 2013, advise the Board of Directors on the following:

(i) Whether the Board of Silk Textile Limited can hold its EGM at Dubai?

(ii) Whether the EGM of Print Limited can be held at Dubai?

(5 Marks)

OR

Creative Textiles Ltd. is an unlisted public company. The company's paid-up share capital is ₹ 50 lakh consisting of 5 lakh shares having face value of ₹ 10 each.

Raman is having 50,000 shares in the company. He is not happy with Somnath, who is a director in the company. He believed that Somnath is acting against the interest of the Company. Raman wanted to remove Somnath from the directorship. Removal of a person from the directorship requires the approval of the shareholders in the general meeting. The Annual General Meeting (AGM) of the company has recently been concluded and the next AGM will be held in the next year. Considering the case and referring to the provisions of the Companies Act, 2013, advise:

(i) Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?

(ii) If the Company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM?

(5 Marks)

- (b)** Beauty Cosmetics, a company incorporated in Korea has established its branch office in Chennai for conducting its business in India. The structure of paid-up share capital of Beauty Cosmetics as at 31/03/2024 is as below:

The Company does not have any Preference Share Capital.

Equity share capital held by Mr. L, an Indian citizen: 10%

Equity share capital held by Mr. R, an Indian Citizen: 20%

Equity share capital held by Fairness Cosmetics Limited, an Indian Company: 20%

You being a Chartered Accountant are asked to explain with reference to the provisions of the Companies Act, 2013

- (i) whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India and
- (ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company? **(5 Marks)**
- (c)** Mitali Diamonds Ltd. is a company engaged in the business of cutting, polishing and trading of diamonds in and outside India. The company exports the diamonds to USA. For the last five financial years, the foreign exchange earned by the company in exporting the diamond, are as under:

FY 2023-24	:	USD 1,25,000
FY 2022-23	:	USD 1,10,000
FY 2021-22	:	USD 95,000
FY 2020-21	:	USD 98,000
FY 2019-20	:	USD 93,000

The Company wants to give donation of USD 10,000 to an institution situated in USA which provides technical support and training in the field of cutting and polishing of raw diamonds. This will help the company in guiding its own employees, posted in USA to-get the requisite training.

Referring to the provisions of the Foreign Exchange Management Act, 1999, state whether the Company can give donation to such institution in USA? **(4 Marks)**

Answer:

(a) Place for holding EGMs:

As per Sec. 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an EGM of the company.

However, an EGM of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the given case, Silk Textile Limited (incorporated in India). Having two subsidiaries - Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary); both incorporated outside India. Board of Print Limited wanted to hold an EGM on urgent basis at Dubai. Chairman of Silk Textile Limited also wanted to hold EGM of Silk Textile Limited at Dubai so that he can attend both the EGM.

Conclusion: Based on the above stated provisions of Sec. 100, following conclusions may be drawn:

- (i) Board of Silk Textile Limited **cannot** hold its EGM at Dubai, as it is a company incorporated in India.
- (ii) EGM of Print Limited **cannot** be held at Dubai, though print Limited is incorporate outside India, but it is not wholly owned subsidiary of Silk Textiles Limited.

OR

Requisition for Calling EGM:

- As per Sec. 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.
- The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.
- If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sec. 100(4)].
- In the given case, paid up share capital of Creative Textiles Ltd. consists of 5 lakh shares having face value of ₹ 10 each; Raman is having 50,000 shares in the company and wants to remove Somnath from the directorship, which requires the approval of the shareholders in the general meeting.

Conclusion: Based on the above stated provisions, following conclusions may be drawn:

- (i) Raman can make a requisition to the company for calling of the EGM as he holds requisite paid up share capital (i.e. 1/10th of Paid-up capital of company)
- (ii) If the Company does not call the EGM on the requisition of Raman, Raman can himself call the EGM within a period of three months from the date of the requisition.

(b) Determination of Status of Foreign Company:

As per Sec. 2(42) of the Companies Act, 2013, a “foreign company” means any company or a body corporate incorporated outside India which has a place of business in India whether by itself or through an agent physically or through electronic mode and conducts any business activity in India in any other manner.

In the given question, Beauty Cosmetics, a Korean Company has established a place of business in India (branch office in Chennai) and also carries on the business in India.

Conclusion: Beauty Cosmetics shall be deemed to be a Foreign Company.

Application of provisions of the Companies Act, 2013 on foreign company:

As per Sec. 379(2) of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:

- (i) one or more citizens of India; or
- (ii) by one or more companies or bodies corporate incorporated in India; or
- (iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such Company shall comply with the provisions of Chapter XXII (dealing with the legal provisions for ‘Companies incorporated outside India’) and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a Company incorporated in India.

In the given question, equity share capital held by Mr. L, Mr. R, both being Indian citizens, besides equity share capital held by Fairness Cosmetics Limited, an Indian Company, in Beauty Cosmetics (Company incorporated in Korea) are 10%, 20% and 20% respectively. In aggregate, Mr. L, Mr. R and Fairness Cosmetics Limited are holding 50% of the paid-up share capital of a foreign Company.

Conclusion: Beauty Cosmetics, shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

(c) Provisions as to Transactions relating to donation to a technical institution:

- As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with Sec. 5 of the FEMA, 1999 donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or USD 5,000,000, whichever is less, can be remitted by persons other than individuals for contribution to a technical institution or body or association in the field of activity of the donor Company with the prior approval of the RBI.
- In the given case, Mitali Diamonds Ltd. (company engaged in the business of cutting, polishing and trading of diamonds in and outside India), wants to give donation of USD 10,000 to an institution situated in USA which provides technical support and training in the field of cutting and polishing of raw diamonds. This will help the company in guiding its own employees, posted in USA to get the requisite training.

Conclusion: Maximum amount that can be donated will be 1% of their foreign exchange earnings during the previous 3 financial years or USD 5,000,000, whichever is less without prior approval of the RBI.

Hence, company can donate maximum of USD 3,300 (1% of USD 1,25,000+ USD 1,10,000 + USD 95,000); to pay USD 10,000, it shall require prior approval of Reserve Bank of India.

Note: Though every care has been taken in preparing the suggested answers; however alternate answers possible based on different understanding/assumption.

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