PAPER – 2: CORPORATE AND OTHER LAWS

*Question No. **1** is compulsory.*

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

Question 1

(a) *Innovative Ltd., a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:*

Particulars	*INR (Crore)*
Authorised Share Capital	
100,00,000 Equity Shares of ₹ 10 each	*10.00*
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of ₹ 10 each	*5.00*
Share Premium	*1.00*
General Reserve	*3.52*
Profit & Loss Account	*1.58*

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price ₹ 25 per share with a consideration of ₹ 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable? ***(6 Marks)***

(b) *ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.*

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013. ***(6 Marks)***

(c) 'S' guarantees 'V' for the transactions to be done between 'V' & 'B' during the month of March, 2022. 'V' supplied goods of ₹ 30,000 on 01.03.2022 and of ₹ 20,000 on 03.03.2022 to 'B'. On 05.03.2022, 'S' died in a road accident. On 10.03.2022, being ignorant of the death of 'S', 'V' further supplied goods of ₹ 40,000. On default in payment by 'B' on due date, 'V' sued on legal heirs of 'S' for recovery of ₹ 90,000. Describe, whether legal heirs of 'S' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act, 1872.

What would be your answer, if the estate of 'S' is worth of ₹ 45,000 only? ***(4 Marks)***

(d) 'A drew a cheque for ₹ 20,000 payable to 'B and delivered it to him. 'B' endorsed the cheque in favour of 'R' but kept it in his table drawer. Subsequently, 'B' died, and cheque was found by 'R' in 'B's table drawer. 'R' filed the suit for the recovery of cheque. Whether 'R' can recover cheque under the provisions of the Negotiable Instruments Act, 1881? ***(3 Marks)***

Answer

(a) Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Alternate Answer

Issue of Sweat Equity Shares

As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, as defined in notification number G.S.R. 127(E) dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, it may issue sweat equity shares not exceeding fifty percent of its paid up capital up to ten years from the date of its incorporation or registration. A company which is not a start-up company shall not issue sweat equity shares for more than fifteen per cent of the existing equity paid-up share capital in a year or shares of the issue value of rupees five crore, whichever is higher, provided that the issuance of sweat equity shares in the company shall not exceed twenty-five per cent, of the paid-up equity capital of the company at any time.

As per the aforesaid notification number G.S.R. 127(E) dated the 19th February, 2019 an entity shall be considered as a Start-up, if it is incorporated as a private limited company (as defined in the Companies Act, 2013).

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares i.e., 30% to be issued by a start-up entity would be appropriate. However, Innovative Ltd. being a public company cannot assume the status of a start-up entity. Hence, the decision of the company to issue 30% sweat equity shares to a class of directors and employees was not within the prescribed limit. Hence, the size of issue of sweat equity shares of the company was not appropriate.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

(b) Interim dividend: As per section 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.

Provided that 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.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years.

Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

(c) Revocation of continuing guarantee by surety's death (Section 131 of the Indian Contract Act, 1872): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

Accordingly, in the given instance, legal heirs of S are not liable to pay ₹ 90,000 but for ₹ 50,000 as death of surety operates as a revocation of a continuing guarantee as to the future transactions, i.e., ₹ 40,000 in this case, taking place after the death of surety.

Further, surety's estate remains liable for the transactions taken place before the death of the surety. Legal heirs of surety will be obliged to perform the contract on behalf of surety to the extent of share inherited. V shall be entitled to recover ₹ 45,000 only from the estate of S.

(d) Negotiation by indorsement [Section 48 of the Negotiable Instruments Act, 1881]: Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

As per the given provision, as R does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. So, R cannot recover cheque, though endorsed in his favour.

Question 2

(a) *A General Meeting of ABC Private Ltd was scheduled to be held on 15th April, 2022 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2022 was deposited by Mr. Y with the company at its registered office on 11-04-2022. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2022 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2022. All the proxies viz., Y, M and N were present before the meeting.*

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? ***(4 Marks)***

(b) (i) *A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 2015-16 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT.* ***(3 Marks)***

(ii) *SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of ₹10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?* ***(3 Marks)***

(c) *Akashia Steels is a famous manufacturer of steel products. Proprietor of Akashia Steels, Mr. S.K Jain appointed Mr. Satish as his agent. Mr. Satish is entrusted with the work of recovering money from various traders to whom firm sells its products. Satish has earned commission of ₹ 1,15,000 for his work. He recovers money from clients on behalf of Akashia Steels. During a particular month he collects ₹ 4,00,000 but deposited in the firm's account only ₹ 2,85,000 after deducting his commission.*

Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether act of Mr. Satish is valid? ***(4 Marks)***

(d) *Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of ₹ 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was*

having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only ₹ 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.

Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence? ***(3 Marks)***

Answer

(a) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. Section 105(4) provides that a proxy received 48 hours before the meeting will be valid. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein.

Thus, in case of **member X,** the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of **member W**, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

(b) (i) **Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for re-opening of accounts**—A company shall re-open its books of account and recast its financial statements, on an application made by the Central Government, or other competent authorities as prescribed under section130 (1) of the Companies Act, 2013 to the NCLT to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is validly filed to NCLT.

(ii) According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by

the Board of Directors or the Audit Committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of ASR Ltd. requested its Statutory Auditors, SSR & Co. to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditors accept the assignment, following penal provisions as specified in section 147 of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm

Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

(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 is coupled with interest.

Here, Mr. S.K. Jain appointed Mr. Satish as his agent for recovering money from various traders to whom firm sells its products.

From the collection of ₹ 4,00,000, he deposited in the firm's account remaining amount (₹ 2,85,000) after deductions of his share of commission that he has earned for work.

Here, the agency created is coupled with interest. When the agent is personally interested in the subject matter of agency, such an agency becomes irrevocable. and the act of Mr. Satish will be considered as valid.

Alternate answer

Right to retain out of sums received on principal's account (Section 217): This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:

(a) all moneys due to himself in respect of advances made

(b) in respect of expenses properly incurred by him in conducting such business

(c) such remuneration as may be payable to him for acting as agent.

The right can be exercised on any sums received on account of the principal in the business of agency.

Here, Mr. S.K. Jain appointed Mr. Satish as his agent for recovering money from various traders to whom firm sells its products.

As per section 217, Mr. Satish has a statutory right to deduct his remuneration (i.e., commission) of ₹ 1,15,000 from the total amount of ₹ 4,00,000 collected on behalf of his principal and remit the remaining amount of ₹ 2,85,000 to Mr. S.K. Jain. Hence, the act of Mr. Satish will be considered as valid.

(d) As per the facts stated in the question, Mr. X (drawer) issued the cheque to Mr. R for outstanding dues of ₹ 5,00,000 on 26/07/2022 with the postdated cheque of 1/08/2022. But on 29/07/2022, he made payment for his taxes and left with bank balance of ₹ 4,50,000.

Mr. X requested Mr. R not to present the cheque for payment. Later, he gave a stop payment request to the bank in respect of the cheque issued to Mr. R.

Where any cheque drawn by a person for consideration is returned by the bank unpaid because of the amount of money standing to the credit of that account is insufficient to honour the cheque such person shall be deemed to have committed an offence and shall be punishable. (Section 138)

Once a cheque is issued by the drawer, a presumption under section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under section 138.

Also, section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Accordingly, the act of Mr. X, for stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 3

(a) The aggregate value of the paid-up share capital of ABC Security Services, was ₹ 200 crore divided into 20 crore equity shares of ₹ 10/- each at the end of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10/- each. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures:

Particulars	*Amount (₹ in crore)*
Authorized share capital	*300*
Paid -up share capital	*200*
Free reserves created out of profits	*200*
Securities Premium account	*80*
Credit balance of Profit & Loss account	*50*
Reserves created out of revaluation of assets	*25*
Miscellaneous expenditure not written off	*10*

Turnover of the company during the Financial Year 2021-22 was ₹ 800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was ₹ 4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly.

Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provisions of Corporate Social Responsibility.

The Board of Directors of the company constituted of the following persons as its directors:

Mohan Singh	*Managing Director*
Rohit and Bhavana	*Independent Directors*
Venkatesh, Isha, Mohit and Muskaan	*Directors*

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following:

(i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to form a CSR committee is correct? Support your answer with the applicable provision and the required calculation.

(ii) *It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?* ***(6 Marks)***

(b) *L Ltd. having 2,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ₹ 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.*

When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) *Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?*

(ii) *Whether the company was bound to send such representation to its members made by SNS & Co?* ***(4 Marks)***

(c) *Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:*

(i) *X receives a promissory note drawn by his father by way of gift.*

(ii) *A received a cheque for full and final settlement of his dues from his client but, he is prohibited by a court order from receiving the amount of the cheque.*

(iii) *B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee*

(iv) *P works in a bank. He steals a blank cheque of A and forges A's signature.* ***(4 Marks)***

(d) *When can the Preamble be used as an aid to interpretation of a statute?* ***(3 Marks)***

Answer

(a) (i) **Correctness of the contention and required calculations:** According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee (CSR) of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, "**Net worth"** in the light of the provided particulars calculated as ₹ 520 crore [aggregate value of the paid-up share capital (₹ 200 crore), all reserves created out of the profits (₹ 200 crore), securities premium account (₹ 80 crore) and debit or credit balance of the profit and loss account (₹ 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off (₹ 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation], Turn over given as ₹ 800 crore and Net profits ₹ 4 crore. Since the net worth is not less than ₹ 500 crore section 135(1) is attracted.

Yes, the contention of Praveen, the Company Secretary is correct w.r.t the constitution of CSR Committee as per the compliance of requirement of section 135 of the Companies Act, 2013.

(ii) **Correctness of constitution of CSR Committee:** As per requirement, Corporate Social Responsibility Committee of the Board shall be consisting of three or more directors, out of which at least one director shall be an independent director. Decision that Mohan Singh, Venkatesh, Isha and Bhavna (Independent Director) will be the members of CSR Committee, is correct.

(b) (i) **Special Notice:** As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of ₹1 crore, and it received a notice from its 50 members holding paid-up capital of ₹ 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[**Note:** In the given question 50 members are holding paid-up share capital of ₹ 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is ₹ 1 crore.

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

(ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.

However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

(c) Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases—

(i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

(ii) No, A is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

(iii) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

(iv) No, P is not a holder because he is in wrongful possession of the instrument.

(d) Preamble affords help in the matter of construction, if there is an ambiguity in the law.

Courts refer to the preamble as an aid to construction in the following situations:

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Question 4

(a) H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was ₹ 1.80 crore; and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. ***(5 Marks)***

(b) Mr. Raj is an employee of DSP Trading Pvt Ltd. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Raj paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, define deposit and decide whether this amount received from Mr. Raj will be considered as deposit as per rule 2(1)(c)? ***(5 Marks)***

(c) "Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897. ***(4 Marks)***

(d) Explain the Doctrine of Contemporanea Expositio. ***(3 Marks)***

Answer

(a) As per section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company, —

(i) paid-up share capital of which does not exceed four crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.).

Hence, the contention of the Company Secretary is correct.

(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 may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.

In the instant case, ₹ 5,30,000 was received by DSP Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Raj, who draws an annual salary of ₹ 5,00,000 under a contract of employment.

Accordingly, amount of ₹ 5,30,000 received from Mr. Raj, will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c) of the Act, as the amount received from Mr. Raj is more than his annual salary of ₹ 5,00,000.

(c) "Effect of Repeal" [Section 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.

In *State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305,* SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

(d) Doctrine of *Contemporanea Expositio*

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "*Contemporanea Expositio est optima et fortissinia in lege*" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Question 5

(a) MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generies with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology department. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. ***(5 Marks)***

OR

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50,00,000 equity shares of ₹ 10 each) ₹ 5,00,000

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of ₹ 10 each, fully paid-up) ₹ 2,00,00,000

(iii) Free Reserves ₹ 50,00,000

(iv) Securities premium account ₹ 25,00,000

(v) Capital Redemption Reserve ₹ 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue. ***(5 Marks)***

(b) City Bakers Limited obtained a term loan of ₹ 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013. ***(5 Marks)***

(c) It is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. Do you think bonafide pledge can be made by non-owners? If yes, explain the circumstances with reference to provisions of the Indian Contract Act, 1872. ***(4 Marks)***

(d) "No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897. ***(3 Marks)***

Answer

(a) Remedy against the company: Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, section 35 also mentions punishment prescribed by section 36 *i.e.,* punishment for fraud under section 447.

Circumstances when an expert is not liable: An expert will not be liable for any misstatement in a prospectus under the following situations:

(i) Under section 26 (5): It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or

(ii) Under section 35 (2) (b): It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under section 35 (2) (c): As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

OR

(a) Conditions for bonus shares

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of ₹ 1,00,00,000 (i.e. half of ₹ 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. ₹ 1,00,00,000 (₹ 50,00,000+ ₹ 25,00,000 + ₹ 25,00,000). Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

(b) Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed *ad valorem* fees.

Alternate Answer to this part of question (Extension of Time Limit)

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. Provisions relating to extension of time limit as under:

(i) ***Charges created before 02-11-2018:*** In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

Further, if the charge is not registered within the extended period of 300 days, it shall be done within six months from 02-11-2018 on payment of prescribed additional fees.

(ii) ***Charges created on or after 02-11-2018:*** In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed *ad valorem* fees.

(c) Pledge by Non-Owners: Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are

for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

a. **Pledge by mercantile agent [Section 178 of the Indian Contract Act, 1872]:** A mercantile agent acting in the ordinary course of business, with the consent of the owner, is entitled to pledge the goods.

b. **Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of the goods pledged by him under a voidable contract and which has not been rescinded at the time of the pledge, can be pledged.

c. **Pledge where pawnor has only a limited interest [Section 179]:** Where a person pledges goods in which he has only a limited interest and is not the absolute owner of goods, the pledge is valid to the extent of that interest.

d. **Pledge by a co-owner in possession**: Where the goods are owned by many persons and with the consent of other owners, a co-owner may make a valid pledge of the goods in his possession.

e. **Pledge by seller or buyer in possession**: A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge.

(d) "Provision as to offence punishable under two or more enactments" [Section 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.

Even **Article 20(2)** of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.