PAPER – 2: CORPORATE AND OTHER LAWS

PART I MCQs

Case Scenario I

JK Logistics Ltd., is one of the leading companies in the logistics industry. Five years ago, 75% equity shares of JK Logistics Ltd., were acquired by RK Logistics Ltd. RK Logistics Ltd., has a presence in Haryana, Punjab and Rajasthan and is mainly into transporting of agricultural produce. As timely transportation of agricultural produce is of strategically importance, the state governments of the above three states holds stake in RK Logistics Ltd. The State Government's current stakes are as follows:

State of Haryana: 19%

State of Rajasthan: 20%

State of Punjab: 18%

On 29th September, 2023, just after the conclusion of the AGM, Mr. Rohan, the auditor of JK Logistics Ltd., suffered a stroke and in order to reduce work load, resigned as the auditor of the company but unfortunately, he forgot to inform the concerned authorities about his resignation. It is important to note that auditor's (i.e. Mr. Rohan) annual remuneration was ₹ 5 lakhs.

The company on the other hand, appointed AG & Associates as their auditors after completing all the statutory formalities. Mr. Avinash, who is one of the partners of the audit firm, had borrowed a sum of ₹ 3.5 lakhs from RK Logistics Ltd. and has dues of ₹ 1.49 lakhs towards use of logistic services of the company. Both the sum borrowed and the cost of services taken are not yet paid by Mr. Avinash. Mr. Avinash is not signing the financials of JK Logistics Ltd.

Based on the facts given in above case scenario and by applying the relevant provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 1 to Q. No. 3)

1. *To whom should have Mr. Rohan informed about his resignation? What could be the possible consequence for his non-compliance?*

(A) *He should have informed the registrar and JK Logistics Ltd. As a consequence of his failure, he is liable to a penalty not exceeding 5 lakhs.*

(B) *He should have informed the registrar. As a consequence of his failure, he is liable to a penalty not exceeding ₹ 50,000.*

(C) *He should have informed JK Logistics Ltd. as well as the registrar and C&AG. As a consequence of his failure, he is liable to a penalty not exceeding ₹ 5 lakhs.*

(D) *He should have informed JK Logistics Ltd. as well as the registrar and C&AG. As a consequence of his failure, he is liable to a penalty not exceeding ₹50,000,*

2. *Based on the shareholding pattern of JK Logistics Ltd. and RK Logistics Ltd., select the correct answer as to the classification of these companies:*

(A) *RK Logistics Ltd. is a government company while JK Logistics Ltd. is a non-government company.*

(B) *RK Logistics Ltd. is a non-government company while JK Logistics Ltd. is a government company.*

(C) *RK Logistics Ltd. and JK Logistics Ltd. both are government companies.*

(D) *RK Logistics Ltd. and JK Logistics Ltd. both are non-government companies.*

3. *With respect to the act carried out by Mr. Avinash, the partner of the new audit firm, what can you infer about the appointment of AG & Associates, as auditors of JK Logistics Ltd.?*

(A) *It is valid since the in-debtness is within the prescribed limit.*

(B) *It is not valid since the in-debtness exceeds the prescribed limit of ₹ 1 lakh.*

(C) *It is valid since Mr. Avinash is not signing the financials of JK Logistics Ltd.*

(D) *It is valid since the in-debtness is not with JK Logistics Ltd.*

Case Scenario II

The notice for conducting the annual general meeting of XYZ Limited was sent on 3rd August, 2024 to all the stakeholders, who were eligible to receive the notice. The said notice specified that the Annual General Meeting (AGM) will be held on 5th September, 2024, But, due to want of quorum, said AGM was adjourned to 12thSeptember 2024. In the said meeting held on the 12th September, 2024, the financial statements of the company could not be adopted due to some unavoidable circumstances. Since the financial statements of the company could not be adopted in the above meeting, the directors did not file the financial statements relating to financial year 2023-2024 with the Registrar on the plea that the financial statements of the Company were not adopted in a general meeting and therefore there is no necessity to file any financial statement with the Registrar till the same are not adopted. On 2nd December, 2024, an extra-ordinary general meeting was conducted, in which the financial statements of the company were adopted. Since, the Company Secretary was on a business tour and was absent from India from 10th December, 2024 to 2nd January, 2025, the adopted financial statements were filed with the Registrar only on 3rd January, 2025.

Based on the facts given in above case scenario and referring to the applicable provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 4 to Q. No. 7)

4. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the annual general meeting which could not be held on 5th September, 2024?*

   (A) XYZ Limited should inform the Registrar the fact that the AGM could not be held for want of quorum and therefore the financial statements will be filed with the Registrar only when they are adopted in a general meeting.

   (B) XYZ Limited should inform the Registrar the fact that the AGM could not be held for want of quorum, but the un-adopted financial statements will be filed with the Registrar within a period of 30 days from 5th September, 2024.

   (C) There is no obligation on the part of XYZ Limited to inform the fact to the Registrar that the AGM could not be held for want of quorum, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 5thSeptember, 2024.

(D) There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM could not be held for want of quorum. Also, the un-adopted financial statements will not be required to be filed with the Registrar in this situation.

5. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the adjourned annual general meeting held on 12th September, 2024?*

(A) XYZ Limited should inform the Registrar the fact that the AGM was held on 12th September, 2024 and since the financial statements were not adopted, the financial statements will not be required to be filed with the Registrar.

(B) XYZ Limited is not required to inform the Registrar the fact that the AGM was held on 12th September, 2024 and since the financial statements were not adopted, the financial statements will also not be required to be filed with the Registrar.

(C) There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM was held on 12th September, 2024, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 12th September, 2024, which will be considered by the Registrar as the provisional financial statements.

(D) There is no obligation on the part of XYZ Limited to inform the Registrar the fact that the AGM was held on 12th September, 2024, but the un-adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 12th September, 2024, which will be considered by the Registrar as the financial statements.

6. *What is the course of action that XYZ Limited should take for filing of the financial statements with the Registrar with respect to the extra ordinary general meeting held on 2nd December, 2024?*

(A) XYZ Limited should inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024 and the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024.

(B) *XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024 and the previously filed un-adopted financial statements, if any, will be treated as provisional financial statements.*

(C) *XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, and the previously filed un-adopted financial statements if any, will be returned back to the company.*

(D) *XYZ Limited is not required to inform the Registrar the fact that the financial statements were not adopted in the adjourned AGM held on 12th September, 2024; but the adopted financial statements will be required to be filed with the Registrar within a period of 30 days from 2nd December, 2024, which will be treated as the financial statements of XYZ Limited for the financial year 2023-2024 and the previously filed un-adopted financial statements, if any, will be considered as if no financial statements were filed earlier.*

7. *In the above case scenario, in case XYZ Limited could not convene the annual general meeting till 2nd December, 2024 and the meeting held on that date was the annual general meeting, what will be the obligation of the company with regard to filing of the financial statements with the Registrar, before conducting the said meeting?*

(A) *Since the annual general meeting was not held, XYZ Limited was not required to file any financial statement with the Registrar.*

(B) *Since the annual general meeting was not held, XYZ Limited was not required to file any financial statement with the Registrar, but the statement of facts and reasons for not holding the annual general meeting should have been filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.*

(C) *Even the annual general meeting was not held, XYZ Limited was required to file the financial statements only with the Registrar within thirty days of the last date before which the annual general meeting should have been held.*

(D) *Even the annual general meeting was not held, XYZ Limited was required to file the financial statements along with the statement of facts and reasons for not holding the annual general meeting should have been filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.*

Case Scenario III

Natrajan Cleaners Limited (NCL), a corporate unlisted company, is a contract manufacturing company incorporated in 2017 with a primary objective of manufacturing a full range of residential, commercial and portable washing machine for established brands in India and other neighbouring countries. NCL is a family-owned company having its registered office in Bangalore. The company has its marketing office in all the major cities including port cities. All the members, as was the usual practice, were kept informed from time to time regarding all the important matters and issues relating to the company without fail by the CFO cum Company Secretary Nirad.

Years passed. Size of the business and share capital of NCL substantially increased. NCL plans to go for expansion in its capacity, keeping in mind export market, which required about ₹ 25 crores. NCL started looking for various options for financing. One of the options considered was offer or invitation for subscription of equity through private placement. The Board identified a select group of 50 persons and issued private placement offer and applications after passing a special resolution at a general meeting and also after duly following the required procedure under the applicable corporate laws. Monies received on application were kept in a separate bank account with Canara Bank. However, for some reasons NCL could not allot the equity shares within a period of 60 days from the date of receipt of the application money. The private placement plan was effectively cancelled, duly following the required procedure. NCL later opted for bank loans to finance the expansion.

NCL is authorized by its articles of association to accept whole or any part of the amount of remaining unpaid calls from any member, although till date, no part of that amount has been called up. Yogesh, one of the shareholders deposited in

advance the remaining amount due on his shares without any calls made by NCL. NCL declared dividend during the year after such advance money was paid by Yogesh. Yogesh wanted to exercise his voting rights also in respect of call money paid in advance at the general meeting.

Bhisma Cleanser Private Limited (BCPL) has been holding 5% equity in NCL since February 2018. During the month of February 2022, NCL invested in 70% equity shares of BCPL.

Based on the facts given in above case scenario and referring to the applicable provisions of the Companies Act, 2013 and Rules therein, choose the correct answer of the following questions: (Q. No. 8 to Q. No. 10).

8. *The Board of Directors of NCL wants to understand from Nirad the implications of 5% holding of BCPL.*

   (A) BCPL shall surrender its 5% equity holding to NCL immediately once it becomes the subsidiary of NCL.

   (B) BCPL shall transfer its 5% equity holding to any nominees of NCL before it becomes the subsidiary of NCL.

   (C) BCPL shall immediately transfer its 5% equity holding to any other legal person or entity before investment by NCL.

   (D) BCPL may continue to hold 5% equity holding in NCL.

9. *Yogesh, one of the shareholders deposits in advance the remaining amount due on his shares without any calls made by NCL. NCL declared dividend during the year.*

   (A) Yogesh is not entitled to any dividend in respect of call money paid in advance.

   (B) Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by a Board Resolution.

   (C) Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by an Ordinary Resolution in a general meeting.

   (D) Yogesh is entitled to proportionate dividend in respect of call money paid in advance, if authorized by Articles of Association.

10. *With reference to the Board identified select group of 50 persons and issued private placement offer and applications duly following the required procedure under the corporate laws.*

    (A) Public at large is to be informed about such an issue through release of public advertisement through utilizing any media, marketing, distribution channels or agents.

    (B) A release of public advertisement in any local newspaper and one national newspaper informing private placement is sufficient.

    (C) No company issuing securities under private placement shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.

    (D) Informing the public at large through advertisement or otherwise is optional and the Board of Directors by passing a Board Resolution may decide the matter.

Case Scenario IV

Aces High Builders Ltd. (AHBL) is Dehradun based public limited construction company engaged in the business of developing high-end flats and villas across prime locations in Uttarakhand, India. The company had procured land in the hills of Mussoorie in the year 2019. Since then, it has been engaged in the development of the above site thereby building a set of 12 villas and 75 flats. The builders have also tied-up with one of the U.S. based commission agent Mr. Cooper who would be promoting the above property amongst Non-Residents who would like to own their private accommodation in the above location. Mr. Cooper has successfully sealed a deal with a non-resident based in Las Vegas, U.S.A. for the purchase of one of the villas costing USD 600,000, for which he is to be paid a suitable commission on the above remitted amount.

The last year landslides and other geographical disruptions in the region during monsoon season has compelled the builders to obtain expert consultancy regarding shaping and curing of the land in and around the constructed site including designing the roads; power facilities in the region and other infrastructural backup so that the area can made safe for living all around the year. Accurate Consultants Ltd. an U.S.A. based consultancy services company has been hired to provide such services. Negotiations are been carried regarding the consultancy fees to be charged by them.

AHBL has lately started another unit engaged in the manufacturing and export of mortar mixing machines. During the current year it has received a sale order for two such machines from Italy. The machines have been packed in containers and shipped via sea to the Italian customers. Such containers have reached the Italian port. The Detention charges to be paid by the sellers are well above the rate as prescribed by Director General of Shipping.

The company has also explored areas near Rishikesh for developing of farm houses. At the initial stage, it has selected a piece of land at the outskirts of the city for the above purpose. Since the development requires huge investments, it has issued advertisements regarding the same in electronic media which has a worldwide coverage. Mr. Tony, a man of Indian origin, having migrated to U.S.A. in 1977 and he is much influenced by the above advertisement and has contacted the company with an offer to invest USD 260,000 in the same with the condition that 50% of the payment shall be made by him immediately and the rest shall be paid only after the keys to the fully developed farm house has been handed over to him. The company has agreed to his terms and is currently inviting suggestions from its legal team regarding the various nuances and feasibility of the same.

Based upon the above case scenario, you are required to opt the correct answer w.r.t. the following questions (Q. No. 11 to Q. No. 13) in light of the applicable provisions of the FEMA, 1999:

11. *Considering the provisions of the FEMA, 1999 decide upon the maximum amount of commission that can be paid to Mr. Cooper as well as Consultancy charges to Accurate Consultants Ltd. for which approval of RBI would not be required under the above Act.*

    (A) USD 30000 and USD 10,000,000 respectively

    (B) USD 25000 and USD 1,000,000 respectively

    (C) USD10000 and USD 1,00,000 respectively

    (D) USD 15000 and USD 10000 respectively

12. *Considering the provisions of the FEMA, 1999 decide upon the process of releasing the containers from Italian ports by the Indian company.*

    (A) AHBL shall have to obtain prior permission of Ministry of Surface Transport (DG Shipping) for payment of the det ention charges as it exceeds the rates as prescribed by Director General of Shipping.

(B) *AHBL shall have to obtain prior permission of both Ministry of Surface Transport as well as Ministry of Finance, Department of Economic Affairs as the transaction involves payment of foreign exchange as detention charges.*

(C) *AHBL shall have to obtain prior permission of Ministry of Finance, Department of Economic Affairs for payment of the detention charges as it exceeds the rates as prescribed by Director General of Shipping.*

(D) *AHBL need not obtain permission from any government authorities in India as now the ship is at the Italian ports away from Indian Jurisdiction.*

13. *Considering the provisions of the FEMA, 1999 the possible suggestion that can be given by the legal team regarding investment of USD 260,000 by Mr. Tony in the Rishikesh farmhouse project.*

(A) *Mr. Tony can very well invest USD 260,000 towards the farmhouse as being a person of Indian origin he is allowed to buy land in India.*

(B) *Mr. Tony can very well invest but only up to USD 250,000 towards the farmhouse as being a person of Indian origin he is allowed to buy land in India.*

(C) *Mr. Tony cannot invest USD 260,000 towards the farmhouse as being a non-resident.*

(D) *Mr. Tony cannot invest USD 260,000 in instalments of 50%, but only after paying the full one-time amount.*

14. *Where after a partner's death the business is continued in the same Limited Liability Partnership name, the continued use of that name or of the deceased partner's name as a part thereof:*

(A) *shall make his legal representative liable for any act of the limited liability partnership done after his death.*

(B) *shall make his estate liable for any act of the limited liability partnership done after his death.*

(C) *shall make his legal representative or his estate liable for any act of the limited liability partnership done after his death.*

(D) *shall not by itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.*

15. *The General Clauses Act, 1897 is applicable to:*

(A) whole of India including the Union Territory of Jammu and Kashmir.

(B) whole of India excluding the Union Territory of Jammu and Kashmir.

(C) the Act does not define any "territorial extent" clause.

(D) whole of India excluding the National Capital Region and other Union Territories.

Answer Key

MCQ No.	Correct Option
1.	(D)
2.	(C)
3.	(A)
4.	(C)
5.	(C)
6.	(A) / (B)
7.	(D)
8.	(D)
9.	(A)
10.	(C)
11.	(A)
12.	(A)
13.	(C)
14.	(D)
15.	(C)

PART II

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

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

Question 1

(a) 1,00,000 Equity shares of ₹ 100 each were issued at a premium of ₹ 2 per share by PQR Limited after offer for the same was received from the shareholders in terms of the prospectus issued by the company on 1st April, 2022. The prospectus specified that the amount received from the issue will be exclusively used for manufacturing and distributing some life-saving drugs. In August 2024, the company after proper market survey found that there is ample demand for Artificial Intelligence based software and therefore decided to go forward for development of such type of software. They also wanted to divert a small amount for investment in the equity shares of a large successful company. Since there was surplus money from the above issue of equity shares, the Board of Directors passed two resolutions for the above purpose; the first for investing ₹ 60,00,000 for development of Artificial Intelligence based software and the second for investing ₹ 5,00,000 in the Equity Shares in X Limited, which is a listed company.

In order to avoid any unwarranted situation from the shareholders, the Directors called for an extra ordinary general meeting in which votes cast in favour of the proposal was in excess of the votes cast against it. Some shareholders objected to the above action of the Board on the following grounds:

(i) that the resolution passed in the extra-ordinary general meeting was not proper since the required majority did not approve the same;

(ii) that the prescribed details of the notice which was given to the shareholders should also have been published in newspapers (one in English and one in vernacular language), circulating in the city where the registered office of the company is situated indicating clearly the justification for such variation in the use of the funds; and

(iii) that the resolution passed for investing 5,00,000 in the Equity Shares in X Limited is illegal.

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contentions of the shareholders are tenable.

(b) *Sohan Lal was appointed as the statutory auditor of RST Ltd., a non-government company at the Annual General Meeting held on 30th September, 2023. He has resigned after two months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a multinational company.*

Explain how the new auditor will be appointed by RST Ltd. and the conditions to be complied with in this regard.

(c) *Murari Lal, a person resident outside India, has invested in four residential immovable properties under construction in Kolkata. Each property is negotiated at ₹ 2 crore, with the companies owned by builders. This amount is to be paid in two instalments as 60% on immediate basis on booking and the balance on possession of the properties.*

The above transaction is done by the companies owned by builders through two brokers from USA on commission basis. Mr. Murari Lal as per the terms and conditions remitted 60% of the amount of all four immovable properties directly to the company.

Answer the following explaining the provisions of the Foreign Exchange Management Act (FEMA), 1999:

(i) Whether investment by Mr. Murari Lal and payment of commission on this transaction is permissible?

(ii) How much maximum amount of commission can be paid to each broker without RBI approval?

(Ignore the USD - Rupee Exchange Rate)

Answer

(a) According to section 27(1) of the Companies Act, 2013 (the Act), the terms of a contract referred to in the prospectus or objects for which the prospectus has been issued can be varied, but only with the authority of the company given by it in a general meeting by way of a special resolution passed through Postal Ballot.

The first proviso to sub-section (1) requires that prescribed details of the notice which has been given to the shareholders are to be published in newspapers (one in English and one in vernacular language) circulating in the city where the registered office of the company is situated indicating clearly the justification for such variation.

The second proviso to sub-section (1) also prescribes that such company is not to use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

Section 27(2) of the Act provides that the dissenting shareholders (i.e. those who did not agree to the variation) are to be given an exit offer by promoters or controlling shareholders at such exit price and in such manner and conditions as may be specified by SEBI by making regulations for this purpose.

In the given question, PQR Limited has raised amount through issue of equity shares. It was specified that the amount so received will be used exclusively for manufacturing and distributing some life saving drugs. However, now the company wants to use the surplus money left from the mentioned issue of shares, for development of Artificial Intelligence software and for investing in Equity Shares of X Limited (a listed company).

As per facts of the question and the provisions of the Act:

The company called an extraordinary general meeting for the above proposals of using the surplus amount. In this meeting, votes cast in favor were in excess of votes cast against.

Section 27(1) requires that a special resolution be passed in case of variation of terms of objects for which the prospectus has been issued can be varied.

In view of the above provisions, the contentions of the shareholders are discussed as below:

(i) In terms of the provisions of sub-section (1) of section 27 stated above, the first contention of the shareholders is tenable since the resolution passed in the extra ordinary general meeting was not proper as it was not passed by the required majority.

(ii) In terms of the first proviso to sub-section (1) of section 27 stated above, the second contention of the shareholders is also tenable since the required publication was not made in the newspapers as mentioned in the above referred proviso.

(iii) In terms of the second proviso to sub-section (1) of section 27 stated above, the third contention of the shareholders is also tenable since the Act prohibits the company to use any amount raised by it through the prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

In the given case, X Ltd., is a listed company, hence PQR Ltd., cannot invest in the equity shares of X Ltd.

Hence, the resolution passed for investing ₹ 5,00,000 in the equity shares in X Limited is not valid.

(b) Filling Up Casual Vacancy [Section 139(8)]

Any vacancy arising in the office of the auditor due to any reason except on the expiry of his term is known as a casual vacancy.

As per section 139(8) of the Companies Act, 2013 (the Act), the Board of Directors (other than a Government Company) has power to fill casual vacancy in the office of the auditor within 30 days.

In case of casual vacancy due to the resignation of the auditor, such appointment shall be approved by the company by passing an ordinary resolution at a General Meeting convened within three months of the recommendation of the Board.

Any auditor so appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the Audit Committee, (if any). [Section 139(11)].

Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in Section 141

of the Act. The Company shall inform the auditor concerned of his or its appointment.

Compliances:

As per section 140(2) and (3) of the Act read with Rule 8 of Companies (Audit and Auditors) Rules, 2015, the resigning auditor shall file

Form ADT-3 with the company and the Registrar of Companies (ROC) along with valid reasons within 30 days of the date of resignation.

The company shall file a notice of appointment in Form ADT-1 with the ROC within fifteen days of the meeting in which the auditor is so appointed.

The new auditor appointed under Rule 3 shall submit a certificate that:

(i) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under sections 139, 141, and other applicable provisions of the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(ii) A written consent to act as the auditor.

(iii) the proposed appointment is within the limits laid down by or under the authority of the Act;

(iv) The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

(v) The new auditor must communicate with the resigning auditor to ensure there are no professional or ethical concerns.

Thus, the Statutory Auditor can be appointed as per the procedure mentioned above.

(c) The investment in immovable properties in India by Mr. Murari Lal, a resident outside India, is a Capital Account Transaction which is permissible as per Schedule II of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 which permits Acquisition and Transfer of Immovable Property in India by a Person Resident Outside India.

According to Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more.

As per the facts of the question and mentioned provisions, the following are the answers to the questions asked:

(i) Yes, the investment by Mr. Murari Lal and payment of commission on this transaction is permissible.

(ii) Calculation of maximum commission that can be paid without the approval of RBI.

The maximum amount of commission that can be paid to each broker for each transaction, without RBI approval is, more of- USD 25,000 or ₹ 6 lakh [i.e. 5% of (60% of 2 crore)].

Thus, ₹ 6,00,000 can be paid to each broker as commission without taking any prior approval of the RBI.

Question 2

(a) Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL) a listed public limited company. The Board of Directors of Silk Segment Private Ltd. have collectively decided upon the proposal to grant loans of ₹ 15,00,000 and ₹ 20,00,000 to Mr. Sohan and Ms. Subarna respectively for the purchase of fully paid-up shares in Silk Segment Private Ltd.

Mr. Sohan is the Deputy Marketing Manager of Silk Segment Private Ltd. with a monthly salary of ₹ 1,00,000; whereas Ms. Subarna, a qualified Chartered Accountant, is the Chief Financial Officer of Silk Segment Private Ltd. with a monthly salary of ₹ 2,00,000.

In view of provisions of the Companies Act, 2013, decide:

(i) Whether the proposed loans to Mr. Sohan as well as Ms. Subarna can be disbursed by the company keeping in view that Silk Segment is a private limited company?

(ii) *Whether the answer would be different in case only 25% shares of SSPL are held by SBL?*

(b) *The following are the extracts from the financial statements of BUI Private Limited, which is neither a start-up nor it is an associate or subsidiary company of any other company.*

Particulars	***Amount ₹***
Authorised Capital: 10,00,000 Equity Shares of ₹ 100 each	*10,00,00,000*
Paid-up Share Capital: 8,00,000 Equity Shares of ₹ 100 each	*8,00,00,000*
Securities Premium Reserve Account	*2,00,00,000*
General Reserves	*5,00,00,000*
Term Loan from LMR Bank Limited	*12,00,00,000*
Cash Credit Loan (For Working Capital)	*5,00,00,000*

The company has never failed to file the Annual Return and Financial Statements with the Registrar. The company has already successfully repaid all the monies which were accepted earlier in the form of deposits along with due interest. Since the company was successful in implementation of its housing project by utilizing the money accepted in the form of deposits, the Board was interested to accepting deposits once more and take up another housing project in NOIDA since the members of the company were having sufficient surplus money which they wanted to invest in the company to start the project. However, their condition was that the same will be provided by them if the company accepts them in the form of deposits and the applicable provisions of the Companies Act, 2013 and Rules made thereunder are strictly complied with. But, the Board of Directors of BUI Private Limited were not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the said deposits, since the repayment was to be made out of the amount received from the customers who were going to book for the flats in the housing project. Two proposals came for review to the Board, out of which only one proposal was to be selected. The Board wanted you to advise them in choosing the appropriate deposit scheme.

Proposal 1 - Acceptance of Deposits of ₹ 20,00,00,000, to be repaid with interest @ 7% per annum;

Proposal 2 - Acceptance of Deposits of ₹ 14,00,00,000, to be repaid with interest @ 8% per annum.

Referring to the applicable provisions of the Companies Act, 2013, the Rules made thereunder and the notifications issued in this respect, advise the Board stating the justification in support of your advice.

(c) State what do you understand by the term 'document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as a document:

(i) Power of Attorney

(ii) Cheque

Answer

(a) (i) According to section 2(71) of the Companies Act, 2013, (the Act) a Public Company means a company which—

(a) is not a Private Company; and

(b) has a minimum paid-up share capital as may be prescribed:

Provided that, a company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles.

As per section 2(51) of the Act, Key Managerial Personnel (KMP), in relation to a company, includes the Chief Financial Officer.

According to section 67(2) of the Companies Act, 2013, Public Company shall not give any financial assistance:

1. Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise.
2. For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per section 67(3) of the Act, a company may provide the financial assistance, in case of lending money by a company to its employees (other than its directors or key managerial personnel), not exceeding six-month salary of the employees to enable them to buy or

subscribe fully paid shares in the company or its holding company and to hold them by way of beneficial ownership.

In the given question, Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL). Thus, SSPL will also be deemed as a public company [by virtue of Section 2(71)].

Hence, considering the above provisions we can answer the following to the questions asked:

(i) Mr. Sohan is the Deputy Marketing Manager of SSPL; hence loan may be provided to him upto the limit of his 6 months' salary i.e. ₹ 6,00,000. Thus, proposal to grant loan of ₹ 15,00,000 to Mr. Sohan for purchase of shares in SBL is not valid.

Ms. Subarna is a KMP (being the Chief Financial Officer of SSPL), hence, proposal to grant loan to her for purchase of shares in SBL is not valid.

(ii) Section 67 of the Act shall not apply to private companies in whose share capital no other body corporate has invested any money. In case where Silk Block Ltd. (SBL) held only 25% shares of Silk Segment Private Ltd. (SSPL), the latter would not be termed as a subsidiary of the former and hence would not be a deemed public company. It will still be regarded as a private limited company. Further, SBL is holding shares in SSPL, thus SSPL will not fall in the exempted class of private companies and accordingly, the provision of section 67(3) of the Companies Act, 2013 shall apply.

In view of the above provisions, the answer would remain the same in case only 25% shares of SSPL are held by SBL.

(b) Exemption to certain Private Companies:

Notification No. GSR 464 (E) dated 5th June 2015, provided certain exemptions to Private Limited Companies relaxing the provisions of the Companies Act 2013 with respect to certain restrictions for acceptance of deposits.

The restrictions specified in the clauses (a) to (e) of sub-section (2) of section 73 with respect to certain restrictions for acceptance of deposits like issue of circular, filing the copy of such circular with the Registrar,

depositing of certain amount and certification as to no default committed shall not apply to a private company. They are as follows:

(A) which accepts from its members monies not exceeding one hundred percent of the aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:-

(a) which is not an associate or a subsidiary company of any other company;

(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

In the present case, BUI Private Limited was not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the deposits.

Also, since BUI Limited does not satisfy the conditions given in clause (C) above, as its borrowings from banks is not less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, (i.e. 8 crore*2=₹ 16 crore and amount already borrowed is ₹17 crore (i.e Term Loan of ₹ 12 crore and Working Capital of ₹ 5 crore), it has to go for the restricted amount as stated in clause (A) above, i.e. not exceeding one hundred percent of aggregate of the paid-up share capital, free reserves and securities premium account.

Therefore, the maximum amount of deposit it can accept from members will be limited to ₹ 15 crore.

In terms of the options given in the question, the company has no option but to choose Proposal 2 — Acceptance of Deposits of ₹ 14,00,00,000, to be repaid with interest @ 8% per annum.

(c) According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include:

- any matter written, expressed or described upon any substance;
- by means of letters, figures or marks or by more than one of those means;
- which is intended to be used or which may be used, for the purpose or recording that matter.

For example, books, file, painting, inscription and even computer files are all documents. However, it does not include Indian Currency Notes.

(i) Power of Attorney

It is a written legal instrument by which a person (the principal) authorizes another person (the agent) to act on their behalf. It meets the criteria of a document as it is written or expressed, contains information describing the authority granted and is intended to record and communicate the legal relationship.

(ii) Cheque

A cheque is a negotiable instrument that directs a bank to pay a specified sum of money from the drawer's account to the payee. It qualifies as a document because it is written or printed, records details such as the amount, date, and parties involved and serves as evidence of a financial transaction.

Hence, both a Power of Attorney and a Cheque fall within the definition of a "document" within the meaning of Section 3(18) of the General Clauses Act, 1897. They are tangible representations of written information intended for legal or transactional purposes.

Question 3

(a) UINA Infra Projects Private Limited was incorporated on 1st June, 2022. Mr. X had already registered the trade name of "UINA Infra projects" on 1st April, 2018 under the Trade Marks Act, 1999. Mr. X was suffering from a pro-longed disease since 1st April, 2021. When Mr. X recovered from illness on 20th May, 2024 and joined his own office on 5th July, 2024, he came to know from his staff members that a company has been incorporated with the name UINA Infra Projects Private Limited. He lodged a complaint with

the Regional Director on 10th July, 2024 requesting him to order the company to change its name. The Regional Director examined the application of Mr. X and on 11th July, 2024, issued a direction to UINA Infra Projects Private Limited to change its name. Mr. D, a director of UINA Infra Projects Private Limited contended that the above direction of the Regional Director was bad in law and therefore not proper on the following grounds:

A. That the name of the company is not too identical with or too nearly resembles to the name of any other company; and

B. That the stipulated time period of two years of making any complaint with respect to the name in the above ground was already over on 31st May, 2024.

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contention of Mr. D is tenable.

Also advise UINA Infra Projects Private Limited the time period within which the company will be required to change its name in case the direction of the Regional Director was valid.

(b) (i) Members of World One Limited, holding more than 2% of the total voting power wants the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members can do so as per the provisions of the Companies Act, 2013.

(ii) If a member of a listed company who has casted his vote through electronic voting, can attend general meeting of the company and change his vote subsequently?

(c) Explain the Latin term "Absoluta sententia expositore non indiget" and how would the same help in correctly interpreting a definition given in a legislation or statute?

Answer

(a) According to section 16 of the Companies Act, 2013, if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which:

in the opinion of the Central Government (Power delegated to the Regional Director), is of opinion that name (original or revised/new) of

company is identical with or too nearly resembles to the name by which a company in existence, then, either:

(i) On its own or

(ii) On an application by a proprietor of already registered trade mark under the Trade Marks Act, 1999, it may direct the company to change its name.

The company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose.

Application by a proprietor of registered trade mark shall be made within three years of incorporation or registration or change of name of the company.

In the given question, UINA Infra Projects Private Limited was incorporated on 1st June, 2022. The trade mark of UINA Infra Projects was registered on 1st April, 2018.

In terms of the above stated provisions and facts of the question, we can answer the questions as under:

Part (i) - First Ground of Objection:

In the first instance, the contention of Mr. D (a director of UINA Infra Projects Private Limited) is not tenable due to the fact that the restriction is not only with respect to the name of an existing company, but also as a result of an application filed before the appropriate authority by the proprietor of a registered trademark.

In other words, the name of the company "UINA Infra Projects" is verbatim identical to the trademark registered by Mr. X. Hence, the contention of Mr. D is not tenable.

Part (ii) - Second Ground of Objection:

In the second instance also, the contention of Mr. D is not tenable. The application should be made by the proprietor of a registered trademark within three years of incorporation or registration or change of name of the company and not within two years.

(b) (i) According to section 115 of the Companies Act, 2013, where, by any provision contained in this Act or in the Articles 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.

In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 23 of the Companies (Management and Administration) Rules, 2014.

Further, section 140(4) of the Companies Act, 2013 (the Act), provides provision for the appointment of an auditor other than the retiring auditor. As per this section, special notice shall be required for a resolution at an annual general meeting for appointing a person as an auditor in place of the retiring auditor, or providing expressly that a retiring auditor should not be re-appointed.

In the present case, the provisions of section 115 of the Act have been duly complied with. That is to say the notice of the intention to move such a resolution as to appointment of auditor other than the retiring auditor has been given by members of World One Limited, holding more than 2% (i.e. more than 1 %) of the total voting power. Accordingly, members can do so as per the provisions of the Companies Act, 2013.

Alternate Answer

Rule 23(1) of the Companies (Management and Administration) Rules, 2014 specifies that 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 notice.

As per the facts of the question, Members of World One Limited, holding more than 2% of the total voting power, wants the company to give a special notice to move a resolution for appointment of an auditor other than the retiring auditor.

From the above provision, it can be inferred that the members holding 2% of total voting power can approach the company to give a special notice. However, they cannot force the company to give a special notice to move a resolution for appointment of an auditor other than the retiring auditor as stated in the question.

(ii) According to Rule 20(4) (v) (f) (C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

Thus, in the given question, if a member of a listed company has casted his vote through electronic voting, he can still attend the general meeting of the company but neither he can vote again nor he can change his vote.

(c) "*Absoluta Sententia Expositore Non Indiget*"

The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. Thus, if the words of a statute are capable of one construction only, then it would not be open to the courts to adopt any hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

It is a cardinal rule of construction that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning. Therefore, the language used in the statute must be construed in its grammatical sense. The correct course is to take the words themselves and arrive if possible, at their meaning without reference to cases, in the first instance. If the phraseology of a statute is clear and unambiguous and capable of one and only one interpretation, then it would not be correct to extrapolate these words out of their natural and ordinary sense. When the language of a statute is plain and unambiguous it is not open to the courts to adopt any other hypothetical construction simply with a view to carrying out the supposed intention of the legislature.

Thus, it is the primary duty of the court to interpret the words used in legislation according to their ordinary grammatical meaning in the

absence of any ambiguity or doubt. 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.

Question 4

(a) Based on the applicable provisions of the Companies Act, 2013, define the term "foreign company" and identify which among the following companies can be categorized as a foreign company:

Sl. No.	***Place of Incorporation***	***Registered***	***Additional information***
1	*Singapore*	*Singapore*	*Developed patient's database for a hospital in Mumbai, India, server in Singapore.*
2	*UAE*	*UAE*	*No place of business in India but employs agents in India.*
3	*Cape Town*	*Cape Town*	*Board Meeting held in Leh, India.*
4	*Germany*	*Germany*	*49% of the shares held by an Indian company.*

(b) NS & Associates LLP was formed in the year 2020 and it was engaged in the business of manufacturing of plastic parts for automobiles. It constituted of Mr. Naveen and Mr. Suresh as designated partners who were responsible for obtaining contracts from various automobile manufacturers across the country for supply of spare parts for vehicles.

In the year 2021 an investigation was ordered by the Tribunal against the LLP in connection with a financial fraud worth ₹50,25,000. Mr. J one the Accounts Manager and employee of the LLP was accused by the complainant, as one of the perpetrators to the fraud.

The Tribunal levied a penalty of ₹ 1,25,000 to be paid by Mr. J on his conviction. Mr. J approached the Tribunal and provided vital information about the other black sheep involved in the fraud thus aiding in the investigation process. The Tribunal is considering of providing some relief in the penal action taken against him, while the LLP is planning to suspend Mr. J from service for this act.

Considering the provisions of Limited Liability Partnership Act, 2008:

(i) Decide whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?

(ii) Can the LLP suspend Mr. J from service for commission of the act, of revealing the name of the other accused involved in the fraud?

(b) What do you mean by the rule "Ejusdem Generis"? State any three situations when the Rule of "Ejusdem Generis" is not applied by the courts.

Answer

(a) As per section 2(42) of the Companies Act, 2013 (the Act), "Foreign Company" means any company or 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.

So, as per the definition, we can conclude:

Case 1: Place of Incorporation – Singapore. Developed patient's database for a Hospital in Mumbai – Server at Singapore.

It is a Foreign Company.

Though incorporated outside India, it is involved in transacting business in India and having place of business through electronic mode. Hence, it is a foreign company.

Case 2: Place of Incorporation – UAE. No place of business in India, but employs agents in India.

It is not a foreign company.

Since the company, though employed agents in India, but has no place of business in India. Hence, it is not a foreign company.

Case 3: Place of Incorporation and Registered Office – Cape Town; Board Meeting held in Leh, India.

It is not a foreign company.

Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence, it is not a foreign company.

Case 4: Place of Incorporation and Registered Office – Germany; 49% shares are held by an Indian Company.

As per the question, the company is registered in Germany and no information is available about any business(es) being carried on by the company in India which is a basic condition to be fulfilled for being called a foreign company. Under the circumstances, it is just a company incorporated outside India and shall not be considered as a foreign company.

Alternate Answer

Applying the provisions of section 379 (2) of the Companies Act, 2013, if not less than 50% of the shareholding of a foreign company is held by an Indian Company; it is treated as an Indian Company, on which provisions of Chapter XXII of the Companies Act, 2013 applies. Here, only 49 % is held by Indian Company. Hence it is a foreign company.

(b) Section 31 of the Limited Liability Partnership Act, 2008 provides that:

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or when any information given by any partner

  or

- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

On the basis of the above provisions, the question can be answered as under:

(i) Whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?

Yes, the Tribunal has the power to waive or reduce the penalty of ₹ 1,25,000 being imposed on Mr. J as he has provided useful information that is helpful towards investigations in the case of fraud by the LLP.

(ii) Can the LLP suspend Mr. J?

Section 31(2) of the LLP Act, 2008 further provides that:

No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). Hence, Mr. J cannot be suspended from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

(c) The term '*Ejusdem Generis*' means of the same kind or species. Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified. The rule of ejusdem generis is not an absolute rule of law but only a part of a wider principle of construction and therefore this rule has no application where the intention of the legislature is clear.

Situations when the Rule of Ejusdem Generis is not applied by the Courts:

In the following situations, the term "Ejusdem Generis" is not applied by the Courts.

1. If the preceding term is general, as well as that which follows this rule cannot be applied.
2. Where the particular words exhaust the whole genus.
3. Where the specific objects enumerated are essentially diverse in character.
4. Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

Question 5

(a) Quick Money Limited attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ₹ 15 crore during each of the preceding five years. In this connection, the Board of Directors of the company needs your expert views on the following matters:

(i) What is the meaning of "impact assessment"?

(ii) Whether impact assessment is required to be taken by all the companies?

(iii) Who can conduct impact assessment?

(b) State the circumstances under which the winding up of an LLP may be ordered by the Tribunal.

(c) Define the term 'person' as per the General Clauses Act, 1897. Discuss which of the following will be treated as a person:

(i) An idol

(ii) A public body

(iii) A company

Answer

(a) Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 provides the class of companies that are required conduct an impact assessment.

Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Companies Act, 2013, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

The above-mentioned companies may undertake impact assessment, through an independent agency.

Alternate Answer

(i) Meaning of Impact Assessment:

The impact assessment is an exercise to assess the social, economic and environmental impact of a particular CSR project. Impact assessment intends to evaluate "social, economic and environmental return on investment". It is the exercise of taking a retroactive view of the Corporate Social Responsibility (CSR) activities completed by the entity and assess the effects of these activities on various stakeholders like employees, customers, communities and the environment.

Impact assessment is seemingly another step to encourage companies to make considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

(ii) Whether the impact assessment is to be taken by all Companies?

Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amount of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires the following class of companies to conduct an impact assessment:

Every company having average CSR obligation of ₹ 10 crore or more in the three immediately preceding financial years of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking impact assessment.

(iii) Who can conduct an impact assessment?

The impact assessment shall be conducted by an independent agency.

(b) Circumstances in which Limited Liability Partnership may be wound up by Tribunal (Section 64 of the Limited Liability Partnership Act, 2008):

A limited liability partnership may be wound up by the Tribunal:

(a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(c) if the limited liability partnership is unable to pay its debts;

(d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(e) if the limited liability partnership 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

(f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(c) Definition of the term "Person"

As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

- any company, or
- an association, or
- body of individuals, whether incorporated or not.

From the above definition, we can conclude:

(i) An Idol: An idol is a juristic person. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an idol is a person.

(ii) A Public Body: A public body to be a person need not always be set-up by the statute. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and is treated as a "person."

(iii) A Company: The definition of person includes a company. Thus, a company is a person.

Question 6

(a) Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming of world class cricketers. The foundation selects young

boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently it is having 1200 members. The Annual General meeting of the company is usually held at the club cum registered office of the company at Jaipur.

The members in one of the general meetings have strongly suggested that the next Annual general meeting of the company be held at a hotel in near vicinity of the Registered office at Jaipur instead of the Club as the same has a congested sitting area.

It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with facility of only physical voting and no E-Voting to be provided to the members.

Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:

(i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?

(ii) Whether a 15 days' prior notice is valid and as per the law?

(iii) Whether the decision to provide the facility of only physical voting and not E-Voting valid?

OR

(a) Srinivas Iron and Steel Ltd. is a public sector listed company engaged in the manufacture of high-end steel sheets to be supplied to various other entities country-wide. M/s CVB & Associates, Chartered Accountants, had been appointed as the statutory auditors of the company for the term F.Y. 2023-24. Later in the year a financial fraud has come to the fore, not reported by the current auditors in their report, leading to dissatisfaction amongst a group of learned members of the company.

The next Annual General Meeting is scheduled on 28.09.2024. The members comprising of Mr. H, Mr. J, Mr. K holding paid up share capital ₹ 1,50,000; ₹ 1,00,000; ₹ 2,50,000 respectively have collectively decided to send a special notice to the company regarding passing of the resolution at

the next Annual General Meeting for appointment of an auditor other than M/S CVB & Associates as the auditor for the next term.

Referring to the provisions of the Companies Act, 2013 elaborate:

(i) Whether the above members can validly issue such Special Notice to the company?

(ii) What will be the last date for issue of such Special Notice by the members to the company?

(iii) Whether the company would have to communicate about the above Special Notice to other members after receiving the same?

(b) Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.

(c) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the meaning of the term "current account transaction".

Answer

(a) (i) Whether it is compelling upon the Board to consider the directions regarding shift of the venue of the meeting?

In the case of section 8 company, in pursuance of the second proviso to section 96(2) of the Companies Act, 2013, the time, date and place of each Annual General Meeting is required to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. [Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs on the 5th June, 2015].

Hence, the directors are bound to consider the directions regarding shifting of venue for the next Annual General Meeting.

Alternate Answer to Part (i)

As per the facts of the question, the members, in one of the general meetings, have strongly suggested that the next AGM of the company be held near the vicinity of the Registered Office at Jaipur instead of the club as the same has congested sitting area.

Since only suggestions have been given in one of the general meetings, the same cannot be construed as a compulsion on the part of the Board to act thereon. A mere suggestion will not tantamount to be a binding direction. In other words, a suggestion is just an idea or an opinion that someone proposes which need be compulsorily acted upon, while a direction is a set of instructions for where to go or what to do.

So, the suggestion by the shareholders is non-binding on the Board.

(ii) Whether a 15 days' prior notice is valid as per law?

Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs dated 5th June, 2015 provides that section 8 company can hold a meeting with minimum of 14 days' notice as against 21 days' notice otherwise applicable under section 101 (1) of the Companies Act, 2013.

Hence, the director can validly issue a 15 days' notice being greater than 14 days as provided in the notification and the notice is as per the law.

(iii) Whether the decision to provide the facility of only physical voting and not e-voting valid?

Yes, as per the provision of section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, section 8 company, having a number of members of 1000 or more, is required to provide e- voting facility to its members at a general meeting. Hence, the decision of the foundation, to provide the facility of only physical voting and not E-voting, is not valid as section 8 Company is having 1200 members.

OR

(i) Whether the members Mr. H, Mr. K and Mr. J can validly issue special notice to the company?

According to section 115 of the Companies Act, 2013 (the Act), where, by any provision contained in this Act or in the Articles 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 of the Companies (Management & Administration) Rules, 2014, provides that 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.

As per section 140 (4) of the Act, a special resolution is required to be passed for appointment of an auditor other than the retiring auditor at an annual general meeting.

Mr. H, Mr. J and Mr. K are together holding shares of (1,50,000 + 1,00,000 + 2,50,000) = ₹ 5,00,000, which is equal to the minimum required shares to be held by members for validly issuing a Special Notice. Hence, they can validly ask the company to issue the special notice.

(ii) Last date for issue of Special Notice:

Rule 3 of Companies Management and Administrative Amendment Rules 2014:

The notice referred to in sub-rule (1) shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the 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.

Hence, in the above case, the special notice shall be sent by the members to the company latest by 13.09.2024.

(iii) Whether the company needs to communicate the special notice to the other members after receipt of the same?

Yes, the company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

Alternate Answer

In the question, it is mentioned that Srinivas Iron and Steel Limited is a Public Sector, Listed Company, which means that, being a Public Sector Company, it is a Government Company.

According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Changing the Auditor: For changing the Auditor of a Government Company, the Auditor can be changed after seeking consent of the Board and thereafter by writing to the C&AG, New Delhi, by mentioning the reference of negligence on the part of the Statutory Auditors for not reporting the fraud committed in the Company.

Thereafter, considering the request of the company, the C&AG can change the auditor or the audit firm. However, the remuneration of the auditors shall be approved by the shareholders in its general meeting on the recommendations of the Audit Committee as well the Board of Directors of the company.

(b) Section 124 of the Companies Act, 2013 contains the provisions relating to Unpaid Dividend Account (UDA).

Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account.

Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of declaration, the company shall, within 7 days from the expiry of the said period of 30m days, transfer the total amount of unpaid or unclaimed dividend to a special account called the 'Unpaid Dividend Account' which shall be opened in any scheduled bank.

If any money transferred to this Unpaid Dividend Account remains unpaid or unclaimed for a period of seven years from the date of transfer of such

account, it shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund established under section 125(1) of the Companies Act, 2013 maintained and administered by the Central Government.

As per section 124(6) of the Act, all shares in respect of which the dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

As per the facts of the question, Manish, a shareholder of the company has not claimed his dividends from the company for the last 10 years. Eventually, after expiry of the 7th consecutive year, the shares of Manish along with the dividends due to him for the last 10 years would have been already transferred by the company to the Investor Education and Protection Fund along with a statement containing the prescribed details.

Therefore, Manish should claim his shares along with the dividends due from IEPF in accordance with the prescribed procedure and on submission of prescribed documents.

(c) Meaning of the term ''Current Account Transaction"

As per the provision of section 2(j) of the Foreign Exchange Management Act, 1999, "Current Account Transaction" means a transaction other than a Capital Account Transaction and includes the following types of transactions:

(i) Payments in the course of ordinary course of foreign trade, other services such as short-term banking and credit facilities in the ordinary course of business etc.,

(ii) Payments in the form of interest on loans or income from investments,

(iii) Remittances for living expenses of parents, spouse and children residing abroad, and

(iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.