

## PAPER – 2: CORPORATE AND OTHER LAWS

### PART I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2020 EXAMINATIONS

#### Applicability for November, 2020 examinations

The Study Material (July 2019 edition) is applicable for November, 2020 examinations. This study material is updated for all amendments till 30<sup>th</sup> April, 2019. Further, all relevant amendments/ circulars/ notifications etc. in the Company law part and the Other Laws portion, for the period 1st May 2019 to 30<sup>th</sup> April, 2020 are mentioned below:

#### PART I- COMPANY LAW

##### THE COMPANIES ACT, 2013

##### **I. Chapter 2: Incorporation of Company and Matters Incidental thereto**

###### **Amendments related to - Notification G.S.R. 357(E) dated 10<sup>th</sup> May, 2019**

The Central Government has amended the Companies (Incorporation) Rules, 2014, by the Companies (Incorporation) Fifth Amendment Rules, 2019.

In the Companies (Incorporation) Rules, 2014, Rule 8 has been fully substituted by Rule 8, Rule 8A and Rule 8B.

[Note: On page 2.19 of the Study Material, under the heading of **Undesirable names**, 'the words and combinations thereof which shall not be used in the name of a company depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression', were earlier covered under Rule 8. As per the amendment now they are dealt in with Rule 8B.]

##### **II. Chapter 3: Prospectus and Allotment of Securities**

###### **Amendments related to - Companies (Amendment) Act, 2019**

Following sections of the Companies Act, 2013 have been amended by the Companies (Amendment) Act, 2019 through *Notification No. S.O. 2947(E) dated 14<sup>th</sup> August, 2019* [the sections contained therein shall deemed to have come into force on 15<sup>th</sup> August, 2019]

###### **1. In section 26-**

- (i) in sub-sections (4), (5) and (6), for the word "registration", the word "filing" shall be substituted;
- (ii) sub-section (7) shall be omitted

[Amendment to be incorporated on Pg. 3.7 and 3.8 of SM]

###### **2. In section 29-**

- (i) in sub-section (1), in clause (b), the word "public" shall be omitted;
- (ii) after sub-section (1), the following sub-section shall be inserted, namely:-

“(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”.

[Amendment to be incorporated on Pg. 3.9 of SM]

3. In **section 35**, in sub-section (2), in clause (c), for the words “delivery of a copy of the prospectus for registration”, the words “filing of a copy of the prospectus with the Registrar” shall be substituted.

[Amendment to be incorporated on Pg. 3.23 of SM]

### III. **Chapter 4: Share Capital and Debentures**

#### **Amendments related to - Notification G.S.R. 574(E) dated 16<sup>th</sup> August, 2019**

The Central Government has amended the Companies (Share Capital and Debentures) Rules, 2014, by the Companies (Share Capital and Debentures) Amendment Rules, 2019.

In the Companies (Share Capital and Debentures) Rules, 2014:

1. In **Rule 4**, in sub-rule (1),
  - (i) for clause (c), the following clause shall be substituted, namely:-
 

“(c) the voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;”;
  - (ii) clause (d) shall be omitted.
 

[Enforcement Date: 16<sup>th</sup> August, 2019]

[Amendment to be incorporated on Pg. 4.5 of SM]
2. In the principal rules, in rule 18, for sub-rule (7), the following sub-rule shall be substituted, namely:-
 

“(7) The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:-

  - (a) Debenture Redemption Reserve shall be created out of profits of the company available for payment of dividend;
  - (b) the limits with respect to adequacy of Debenture Redemption Reserve and investment or deposits, as the case may be, shall be as under:-
    - (i) Debenture Redemption Reserve is not required for debentures issued by All India Financial Institutions regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures;
    - (ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, Debenture Redemption Reserve shall be as

applicable to Non –Banking Finance Companies registered with Reserve Bank of India.

- (iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), Debenture Redemption Reserve is not required in the following cases-
- (A) in case of public issue of debentures –
    - A. for NBFCs registered with Reserve Bank of India under section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;
    - B. for other listed companies;
  - (B) in case of privately placed debentures, for companies specified in sub-items A and B.
- (iv) for unlisted companies, (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)) –
- (A) for NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, Debenture Redemption Reserve is not required in case of privately placed debentures.
  - (B) for other unlisted companies, the adequacy of Debenture Redemption Reserve shall be ten percent. of the value of the outstanding debentures;
- (v) In case a company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of subclause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):
- Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year.
- (vi) for the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:—
- (A) in deposits with any scheduled bank, free from any charge or lien;
  - (B) in unencumbered securities of the Central Government or any State Government;

(C) in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(D) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882:

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

(c) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

(d) the amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.“

[Enforcement Date: 16<sup>th</sup> August, 2019]

[Amendment to be incorporated on Pg. 4.44 of SM]

#### IV. Chapter 7: Management and Administration

##### Amendments related to - Companies (Amendment) Act, 2019

Following sections of the Companies Act, 2013 have been amended by the Companies (Amendment) Act, 2019 through *Notification No. S.O. 2947(E) dated 14<sup>th</sup> August, 2019* [the sections contained therein shall deemed to have come into force on 15<sup>th</sup> August, 2019]

In **section 90**,

(i) after sub-section (4), the following sub-section shall be inserted, namely:-

“(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.”;

[Amendment to be incorporated on Pg. 7.13 of SM]

(ii) after sub-section (9), as so substituted, the following sub-section shall be inserted, namely:

“(9A) The Central Government may make rules for the purposes of this section.”

[Amendment to be incorporated on Pg. 7.14 of SM]

(iii) in sub-section (11), after the word, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” shall be inserted.

[Amendment to be incorporated on Pg. 7.14 of SM]

#### V. Chapter 9: Accounts of Companies

##### (A) Amendments related to - Notification G.S.R. 390(E) dated 30<sup>th</sup> May, 2019

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, after item (xi) and the entries relating thereto, the following item and entries shall be inserted, namely:

“(xii) disaster management, including relief, rehabilitation and reconstruction activities.”

[Enforcement Date: 30<sup>th</sup> May, 2019]

[Amendment to be incorporated on Pg. 9.38 of SM]

**(B) Amendments related to - Notification G.S.R. 776(E) dated 11<sup>th</sup> October, 2019**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely:

“(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).”

[Enforcement Date: 11<sup>th</sup> October, 2019]

[Amendment to be incorporated on Pg. 9.38 of SM]

**(C) Amendments related to - Companies (Amendment) Act, 2019**

Following sections of the Companies Act, 2013 have been amended by the Companies (Amendment) Act, 2019 through *Notification No. S.O. 2947(E) dated 14<sup>th</sup> August, 2019* [the sections contained therein shall deemed to have come into force on 15<sup>th</sup> August, 2019]

In **section 132**—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.”

[Amendment to be incorporated on Pg. 9.16 of SM]

(ii) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).”;

[Amendment to be incorporated on Pg. 9.17 of SM]

(iii) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—

“(B) debarring the member or the firm from—

- I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
- II. performing any valuation as provided under section 247,

for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.”.

[Amendment to be incorporated on Pg. 9.18 of SM]

**(D) Amendments related to - Notification G.S.R. 636(E) 5<sup>th</sup> September, 2019**

The Central Government has amended the National Financial Reporting Authority Rules, 2018, by the National Financial Reporting Authority (Amendment) Rules, 2019.

In the National Financial Reporting Authority Rules, 2018, after clause (c) of sub-rule (1) of **rule 3**, the following explanation shall be inserted, namely:-

“Explanation.- For the purpose of this clause, “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and ‘subsidiary bank’ as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).”.

[Enforcement Date: 5<sup>th</sup> September, 2019]

[Amendment to be incorporated on Pg. 9.19 of SM]

**(E) Amendments related to - Notification G.S.R. 803 (E) dated 22<sup>nd</sup> October, 2019 w.e.f. 1<sup>st</sup> December , 2019**

The Central Government has amended the Companies (Accounts) Rules, 2014, by the Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

“(iia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.

Explanation.—For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

[Amendment to be incorporated on Pg. 9.26 of SM]

**(F) Amendments related to - Notification G.S.R. 313(E).—dated 26th May, 2020**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

[Enforcement Date: 28<sup>th</sup> March, 2020]

[Amendment to be incorporated on Pg. 9.38 of SM]

**PART II- OTHER LAWS**

**[I] THE INDIAN CONTRACT ACT, 1872**

Amendment via the Jammu and Kashmir Reorganisation Act, 2019, dated 9<sup>th</sup> August, 2019. The amendment is effective with effect from 31<sup>st</sup> October, 2019.

As per the Jammu and Kashmir Reorganisation Act, 2019, in the Indian Contract Act, 1872, in sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.

Now, Section 1 will be read as under,

**'Short title-** This Act may be called the Indian Contract Act, 1872.

**Extent, Commencement-** It extends to the whole of India and it shall come into force on the first day of September, 1872.

**Saving-** Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.'

**[II] THE GENERAL CLAUSES ACT, 1897**

Amendment via the Jammu and Kashmir Reorganisation Act, 2019, dated 9<sup>th</sup> August, 2019. The amendment is effective with effect from 31<sup>st</sup> October, 2019.

As per the Jammu and Kashmir Reorganisation Act, 2019, the General Clauses Act, 1897 has been extended as a whole.

**# Here, SM means Study Material (i.e. Page number of the Study material in reference to relevant provisions)**

## PART II: QUESTIONS AND ANSWERS

## QUESTIONS

## Division A: Case Scenario/ Multiple Choice Questions

1. Mr. B R Mohanty, around two-decade back; along with two of his elder brothers and few friends, who are pharma and chemical engineers by profession promoted two companies; first being Well-Mount Limited (WML) dealing in wellness products and pharmaceuticals; whereas other is Tex-Mount Limited (TML) dealing in textile products. During these two decades, both WML and TML has grown magnificently as both the sectors expanded beyond imagination. Both companies went public and stock of same listed on leading stock exchanges of countries.

TML did well in the past and emerged as a major export unit but in recent years the textile sector witness stiff competition due to new entrants. The increased cost of the workforce and other input materials is also made sector unprofitable and recent lockdown hit the sector further adversely. TML's bottom line for the current financial year is red. TML was declaring dividends since the very first year of operation and willing to continue the tradition considering dividend as signalling effect to an investor for valuation purpose. Rate of dividend for the recent five years was 9%, 10%, 8%, 5% and 2% (9% being five years ago and 2% being the previous year) respectively. The management at TML decided to declare dividends out of the profit of previous years. TML deals in export hence came under the scanner of enforcement authority, who seek financial statements and books of accounts of TML for scrutiny for the last 10 preceding financial years. In response to notice, TML furnish financial statements and books of accounts for last 8 immediately preceding financial years only, stating as per its Article of Association; TML is required to maintain and keep the books of accounts for 8 immediately preceding financial years only and that too without any record of vouchers pertaining to such accounts.

WML is doing well, it seizes outbreak of COVID-19 as a business opportunity and registers significant growth in both top and bottom line. For the past many years, WML declare a dividend at a constant rate of 20%. During the financial year 2019-20, WML earns a profit of 580 Crores. Board of directors of WML declares 25% dividend without transferring any % to reserve on 15<sup>th</sup> June, 2020. On 14<sup>th</sup> July, 2020 some of the amount remaining unpaid, due to operation of law; has been transferred to unpaid dividend account on 20<sup>th</sup> July, 2020. CA. Dev was appointed as auditor under section 139 of Companies Act, 2013 of WML in individual capacity during 17<sup>th</sup> AGM for against the financial year 2018-19.

- A. In case of TML, which of the following statements are correct regarding the declaration of dividend?
  - (i) TML can't declare the dividend because it earns a loss in the current financial year.

- (ii) TML can declare the dividend but only up to 9%
  - (iii) TML can declare the dividend but only up to 5%
  - (iv) TML can declare the dividend but only up to 6.8%
- B.** CA. Dev, who is the auditor of WML have to vacate the office of the auditor in and can be reappointed again only in
- (i) 22<sup>nd</sup> AGM and 27<sup>th</sup> AGM
  - (ii) 27<sup>th</sup> AGM and 32<sup>nd</sup> AGM
  - (iii) 22<sup>nd</sup> AGM and 23<sup>rd</sup> AGM
  - (iv) 22<sup>nd</sup> AGM and can't be re-appointed again.
- C.** In case of WML, which of the following statements is correct regarding the declaration of dividend?
- (i) WML can't declare the dividend at a rate more than 20%
  - (ii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 20% to reserve first.
  - (iii) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 10% of paid-up share capital to reserve first.
  - (iv) WML can declare the dividend out of current years' profit without transferring any % to reserve.
- D.** In case of TML, regarding maintenance and keeping the books of account; which of the following statements hold truth?
- (i) TML needs to maintain and keep the books of account for 10 preceding financial years, hence TML violate the law.
  - (ii) TML doesn't violate the provision of law because it keeps the books of account for 8 immediate preceding financial years.
  - (iii) TML violate the provision of law because it keeps the books of account for 8 immediately preceding financial years without keeping relevant vouchers in the record pertaining to such books of account.
  - (iv) TML doesn't violate the provision of law because it is complying to its Article of Association.
- E.** Regarding declaration and distribution of dividend by WML, which of the following statements is correct from the view of the timeline?
- (i) WML violates the law, because some of the dividend remain unpaid; irrespective of reason for non-payment

- (ii) WML violates the law, because unpaid dividend need to transfer to unpaid dividend account by 19<sup>th</sup> July 2020.
  - (iii) WML doesn't violate the law, because an unpaid dividend transferred to unpaid dividend account prior to 21<sup>st</sup> July 2020.
  - (iv) WML doesn't violate the law, because an unpaid dividend can be transferred to unpaid dividend account at any time within 90 days from the date of declaration.
2. Mr. Purshottam Prasad, a business graduate from leading B-School, running the chain of restaurants; as sole proprietor concern; based in Chennai. Mr. Prasad being dynamic businessman, in order to develop the business; decided to give corporate form to his business; but concerned with dilution of the control over business decisions.

Mr. Prasad, during some journey met Mr. Chinmay Dass; who is school days friend of Mr. Prasad and presently working in one of leading corporate advisory firm. Mr. Prasad seeks advice from Mr. Dass, regarding conversion of sole proprietorship concern to company and also explain his intention to keep the entire control in his hand. Mr. Dass told, about new type of company; which can be formed under Companies Act, 2013; One Person Company (OPC). Mr. Dass quoted section 2 (62), which define 'one person company', a company which has only one person as a member.

Mr. Prasad, felt OPC is correct form of business for him, hence promotes an OPC 'Casa Hangout Private Limited' (One Person Company) on 14<sup>th</sup> September 2019, to which he sold his sole proprietor business and himself became sole member. Mr. Prasad, appointed his younger son Mr. Vijay, who was 21 year old then; as Nominee to OPC. Mr. Anand who is old friend of Mr. Prasad was appointed as director of OPC, Mr. Prasad himself also become director of company.

Mr. Vijay is professional photographer, and for some certification course went to abroad on 23<sup>rd</sup> October 2019. He came back on 1<sup>st</sup> of March 2020. He established photo-studio in form of OPC 'Best Click (OPC) Private Limited' on 20<sup>th</sup> March 2020, in which Mr. Prasad is nominee and he became sole member. In mean time, Mr. Vijay also gave his consent as nominee to another OPC in which his elder brother Mr. Shankar is sole member.

Mr. Prasad met an accident on 25<sup>th</sup> March, 2020, in which he lost his life. Nomination clause invoked, resultantly Mr. Vijay has to take charge over 'Casa Hangout (OPC) Private Limited' (One Person Company) as member with immediate effect. On 30<sup>th</sup> March, 2020 Mr. Shankar was appointed as new nominee to 'Casa Hangout (OPC) Private Limited', who gave written consent on 31<sup>st</sup> March 2020. Mr. Shankar who is investment banker by profession, is of opinion that 'Casa Hangout (OPC) Private Limited' need to amend its object clause and add 'carry out investment in securities of body corporate' as one of object.

Financial Period closed on 31<sup>st</sup> March 2020. Financial statements of 'Casa Hangout (OPC) Private Limited', which is not containing cash flow statement; signed by Mr. Anand (who left as only director after death of Mr. Prasad).

- A.** With reference to appointment of Mr. Vijay and Mr. Shankar as nominee to 'Casa Hangout (OPC) Private Limited', out of followings, who is eligible to be nominee of OPC?
- (i) Any natural person excluding minor
  - (ii) Any legal person excluding minor
  - (iii) Any natural person, who is resident of India; but excluding minor
  - (iv) Any natural person, who is resident as well as citizen of India; but excluding minor
- B.** Mr. Shankar if wish to withdraw his consent as nominee, can do so; by giving written notice to
- (i) Director of OPC and to sole member of company
  - (ii) Director of OPC and to Registrar of companies
  - (iii) Sole member of company and to OPC
  - (iv) Sole member of company and to Registrar of companies
- C.** With reference to legal position of Mr. Vijay as member/s and nominee/s to various OPCs, Which of the following statement is correct in reference to ceiling limit in relation to membership and being nominee to OPC? A person, other than minor; at specific point of time;
- (i) Can be member in any number of OPCs but nominee in one OPC
  - (ii) Can be member in one OPC and nominee in any number of OPCs
  - (iii) Can be member in one OPC and nominee in another one OPCs
  - (iv) Can be member and nominee both in any number of OPCs
- D.** Which of following statement is correct, in reference to requirement for financial Statements of 'Casa Hangout (OPC) Private Limited'
- (i) Must be signed by one director
  - (ii) Must be signed by at-least by two directors
  - (iii) Must contain cash flow statement as part of financial statements
  - (iv) None of the above
- E.** With reference to opinion of Mr. Shankar to add 'carry out investment in securities of body corporate' object, 'Casa Hangout (OPC) Private Limited'
- (i) Can't carry out non-banking financial investment activities & investment in securities of body corporate
  - (ii) Can't carry out non-banking financial investment, but can invest in securities of body corporate'

- (iii) Can carry-out non-banking financial investment & invest in securities of body corporate'
  - (iv) None of the above
3. A is residing in Delhi and has a house in Mumbai. A appoints B by a power of attorney to take care of his house. State the nature of agency created between A and B:
- (a) Implied agency
  - (b) Agency by ratification
  - (c) Agency by necessity
  - (d) Express agency
4. One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:
- (a) 30 days of the date of meeting in which it was adopted
  - (b) 90 days of the date of meeting in which it was adopted
  - (c) 90 days from the closure of the financial statement
  - (d) 180 days from the closure of the financial statement
5. A guarantee which extend to a series of transactions is called
- (a) Special Guarantee
  - (b) Continuing Guarantee
  - (c) Specific Guarantee
  - (d) None of the above
6. An aid that expresses the scope, object and purpose of the Act—
- (a) Title of the Act
  - (b) Heading of the Chapter
  - (c) Preamble
  - (d) Definitional sections
7. Roma along with her six friends has got incorporated Roma Trading Ltd. in May 2019. She kept the paid-up share capital at ₹ 30 lacs. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below ₹ 2 crores. Advise whether the company can be treated as a 'small company'.
- (a) Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 50 lacs and also its turnover has not exceeded the threshold limit of ₹ 2 crores.

- (b) The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company cannot enjoy benefits of 'small company'.
- (c) Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it is treated as a 'small company'.
- (d) If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.
8. Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the schedule time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board:
- (a) The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall,
- (b) As same banquet hall is not available meeting can be held at different place as may be decided appropriate by the Board,
- (c) As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location,
- (d) As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders,
9. Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ₹ 20,00,000. The Board of Directors is keen to utilize ₹ 20,00,000 along with free reserves of ₹ 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28<sup>th</sup> September, 2019. Advise the company.
- (a) ₹ 20,00,000 are to be excluded from the distributable profits as the same cannot be utilized towards declaration of dividend.
- (b) Only 25% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.

- (c) Up to 50% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.
- (d) Up to 60% of ₹ 20,00,000 can be utilized as distributable profits towards declaration of dividend.

### Division B: Descriptive questions

#### The Companies Act, 2013

1. Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

- (i) Whether the contention of Vijay is valid.
  - (ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?
2. Shekhar Limited appointed an individual firm, Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30<sup>th</sup> September, 2019. Mrs. Kamala, wife of Mr. Suresh, invested in the equity shares having face value of ₹ 1 lakh of Shekhar Limited on 15<sup>th</sup> October, 2019. But Suresh & Company continues to function as statutory auditors of the company. Advice.
  3. The Board of Directors of Ramesh Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.
  4. Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:
 

Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each)  
₹ 2,50,00,000

Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹ 1,00,00,000

Free Reserves ₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.
  5. State, with reasons, whether the following statements are true or false?

- (i) XYZ Private Limited may accept the deposits from its members to the extent of ₹ 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 60.00 Lakh.
- (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.
6. What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.
7. Chetan Ltd. issued a notice for holding its Annual general meeting on 7<sup>th</sup> November 2019. The notice was posted to the members on 16<sup>th</sup> October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:
- (i) Whether the meeting has been validly called?
- (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the delay in giving notice be condoned?

**Other Laws**

8. Sandeep guarantees for Gaurav, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Gaurav during the next 3 months.
- After 1 month, Sandeep revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Sandeep is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Gaurav makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000?
9. Raj gives his umbrella to Manoj during raining season to be used for two days during Examinations. Manoj keeps the umbrella for a week. While going to Raj's house to return the umbrella, Manoj accidentally slips and the umbrella is badly damaged. Taking into account the provisions of the Indian Contract Act, 1872, who will bear the loss and why?
10. Rahul drew a cheque in favour of Aman. After having issued the cheque; Rahul requested Aman not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Aman. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Rahul constitute an offence?
11. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also.

- (1) An Act of Parliament which has not specifically mentioned a particular date.
  - (2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14<sup>th</sup> August, 2015 with effect from 1<sup>st</sup> January, 2016.
12. 'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.

**SUGGESTED ANSWERS/HINTS**

**Division A –Answers to Case Scenario/ Multiple Choice Question**

1. A. (iii)  
B. (i)  
C. (iv)  
D. (iii)  
E. (iii)
2. A. (iv)  
B. (iii)  
C. (iii)  
D. (i)  
E. (i)
3. (d)
4. (d)
5. (b)
6. (c)
7. (b)
8. (b)
9. (a)

**Division B –Answers to Descriptive Type Questions**

1. According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.
  - (ii) In the given circumstances, the company is bound to serve a valid notice to Vijay by registered post at his residential address at Kanpur and not outside India.
- 2. Disqualification of auditor:** According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In this case, Mr. Suresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of Shekhar Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Suresh & Company can continue to function as auditors of the Company even after 15<sup>th</sup> October, 2019 i.e. after the investment made by his wife in the equity shares of Shekhar Limited.

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

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

Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of

this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

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

4. According to Section 63 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:** 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 may be prescribed.

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

To issue bonus shares, company will need reserves of ₹ 50,00,000 (half of ₹1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Surya Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

5. (i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five

per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of XYZ Private Ltd. to accept deposits from its members to the extent of ₹ 60.00 lakh is True.

- (ii) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

6. Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- ◆ the debt has been satisfied in whole or in part; or
- ◆ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

**Information to affected parties:** The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

**Issue of Certificate:** As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

7. According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

- 8. Discharge of Surety by Revocation:** As per section 130 of the Indian Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, liability of Sandeep is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.

However, liability of Sandeep for previous transactions (before revocation) i.e. for ₹ 40,000 remains. He is liable for payment of ₹ 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

- 9.** It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160 of the Indian Contract Act, 1872]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

In the instant case, Manoj shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

10. As per the facts stated in the question, Rahul (drawer) after having issued the cheque, informs Aman (drawee) not to present the cheque for payment and as well as gave a stop payment request to the bank in respect of the cheque issued to Aman.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

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 the 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 Rahul, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

11. (1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
- (2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1<sup>st</sup> January, 2016 rather than the date of its notification in the gazette.

12. **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, **for example**, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

**Example:** Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [*Gullipoli Sowria Raj V. Bandaru Pavani, (2009)*].