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PAPER – 2: CORPORATE AND OTHER LAWS

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR MAY, 2020 EXAMINATIONS

Applicability for May, 2020 examinations

The Study Material (July 2019 edition) is applicable for May, 2020 examinations. This study material is updated for all amendments till 30th 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 31st October, 2019 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 10th 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 14th August, 2019* [the sections contained therein shall deemed to have come into force on 15th 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

[Enforcement Date: 15th August, 2019]

[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;

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(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.".

[Enforcement Date: 15th August, 2019]

[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.

[Enforcement Date: 15th August, 2019]

[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 16th 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:

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: 16th August, 2019]

[Amendment to be incorporated on Pg 4.5 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 14th August, 2019* [the sections contained therein shall deemed to have come into force on 15th 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.";

[Enforcement Date: 15th August, 2019]

[Amendment to be incorporated on Pg 7.13 of SM]

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(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.";

[Enforcement Date: 15th August, 2019]

[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.

[Enforcement Date: 15th August, 2019]

[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 30th 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: 30th May, 2019]

[Amendment to be incorporated on Pg 9.38 of SM]

(B) Amendments related to - Notification G.S.R. 776(E) dated 11th 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 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: 11th October, 2019]

[Amendment to be incorporated on Pg 9.38 of SM]

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(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 14th August, 2019* [the sections contained therein shall deemed to have come into force on 15th 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.";

[Enforcement Date: 15th August, 2019]

[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).";

[Enforcement Date: 15th August, 2019]

[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.".

[Enforcement Date: 15th August, 2019]

[Amendment to be incorporated on Pg 9.18 of SM]

(D) Amendments related to - Notification G.S.R. 636(E) 5th September, 2019

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

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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: 5th September, 2019]

[Amendment to be incorporated on Pg 9.19 of SM]

PART II- OTHER LAWS

THE INDIAN CONTRACT ACT, 1872

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

THE GENERAL CLAUSES ACT, 1897

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

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PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A – CASE SCENARIO / MULTIPLE CHOICE QUESTIONS

1 A private company by the name of Neha Pvt. Limited was incorporated in the year 2002. The registered office of the company Neha Pvt. Limited was situated in city K of state Y.

During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the turnover of the company Neha Pvt. Limited was ₹ 1010 crore. The net profit of the company Neha Pvt. Limited for the financial year 2018-19 was ₹ 4 crore.

The Board of Directors of Neha Pvt. Limited consisted of only two directors namely Mr. M and Mr. N. Mr. M and Mr. N were the only directors of company Neha Pvt. Limited since its incorporation in the year 2002.

Mr. M one of the two directors of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of the Board was required to be formed as for the financial year 2019 – 20 due to the reason that net profit of the company Neha Pvt. Limited for financial year 2018-19 was ₹ 4 crore which was less than ₹ 5 crore.

Mr. N the other director of Neha Pvt. Limited was not having the same opinion as Mr. M. He was of the opinion that Corporate Social Responsibility Committee of the Board must be formed for the company Neha Pvt. Limited.

The net profit of the company Neha Pvt. Limited for the financial year 2015-16, 2016-17 and 2017-18 were ₹ 1 crore, ₹ 2 crore and ₹ 3 crore respectively.

Keeping the basic provisions of Companies Act in mind answer the following multiple choice questions:

(A) Mr. M one of the director of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of Board was required to be formed for financial year 2019-20 but Mr. N other director was of opinion that it was required to be formed.

According to your understanding which one of the two director is right and why:

(a) Mr. M because net profit of Neha Pvt. Limited for financial year 2018-19 was less than ₹ 5 crore.

(b) Mr. N because turnover of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 1,000 crore.

(c) Mr. N because net profit of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 2 crore.

(d) Mr. M because turnover of Neha Pvt. Limited for financial year 2019-19 was less than ₹ 1,500 crore.

(B) The company Neha Pvt. Limited must give preference to spend the amount of contribution towards Corporate Social Responsibility in area of:

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(a) City O of State Y

(b) City A of State Z

(c) City G of State Z

(d) City K of State Y

(C) According to law Corporate Social Responsibility Committee shall consist of three or more directors, so for company Neha Pvt. Limited the Corporate Social Responsibility Committee will:

(a) Not be formed as it has only two directors namely Mr. M and Mr. N

(b) Be formed only after appointing one more director apart from Mr. M and Mr. N

(c) Be formed with two directors only namely Mr. M and Mr. N

(d) Be formed only after appointing two more directors apart from Mr. M and Mr. N

(D) The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of atleast:

(a) ₹ 0.04 crore

(b) ₹ 0.12 crore

(c) ₹ 0.18 crore

(d) ₹ 0.06 crore

2. GHWX Private Limited was incorporated in the year 2009. The registered office of the company GHWX Private Limited was situated in city T of state V. The Board of Directors of GHWX Private Limited comprised of five directors namely Mr. K, Mr. N, Mr. R, Mr. U and Mr. W.

During the financial year beginning on 01/04/2018 and ending on 31/03/2019 the second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018. Out of 5 directors, Mr. K, Mr. N, Mr. R and Mr. W were present for the said meeting. During the meeting of Board of Directors a resolution on one of the important matters was passed. While three directors namely Mr. K, Mr. N and Mr. R agreed with the resolution and voted in favour of resolution, however, Mr. W did not agree with the resolution and voted against the resolution.

The minutes of the second meeting of Board of Directors of GHWX Private Limited held on 7 September, 2018 were prepared and they were entered in Minutes Book of meeting of Board of Directors of GHWX Private Limited. One of the director Mr. K was of the opinion that minutes of second meeting of Board of Directors of GHWX Private Limited must be prepared and entered in Minute Book of meeting of Board of Directors of GHWX Private Limited by end of October, 2018. The remaining four directors namely Mr. N, Mr. R, Mr. U and Mr. W did not agree with the opinion of Mr. K because they thought that it was not within the time limit as prescribed by the law.

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One of the directors, Mr. N. opined that minute books of meetings of Board of Directors of GHWX private limited for the years starting with 2009 to 2015 should be shredded to ruins as these papers were taking a lot of space. He further added that since the Companies Act, 2013 is silent as to maintaining the minute book of meetings of Board of Directors, it is not necessary to maintain such minute books.

The Board of Directors of GHWX Private Limited did not decide any place where minute book of meetings of Board of Directors of GHWX Private Limited will be kept.

Keeping the provisions of minutes and minutes book in mind answer the following multiple choice questions:

(A) The second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018 for the financial year 2018-19. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must contain:

(a) Name of director Mr. U who was absent from the meeting of Board of Directors held on 7 September, 2018.

(b) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W comprising Board of Directors of GHWX Private Limited.

(c) Name of one director Mr. U who was absent and one director Mr. K who was present in the meeting of Board of Directors held on 7 September, 2018.

(d) Names of directors Mr. K, Mr. N, Mr. R and Mr. W who were present in the meeting of Board of Directors held on 7 September, 2018.

(B) The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 held on 7 September, 2018 must contain:

(a) Name of four directors Mr. K, Mr. N, Mr. R and Mr. W who were present in meeting and voted in the resolution.

(b) Name of director Mr. W who voted against the resolution.

(c) Name of directors Mr. K, Mr. N and Mr. R who voted in favour of the resolution.

(d) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W who all had the right to attend the meeting and vote in the resolution.

(C) The opinion of one of the director Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:

(a) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018.

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(b) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.

(c) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.

(d) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018.

3. G Ltd. (a company having CSR Committee as per the provision of Section 13 of the Companies Act, 2013) decides to spend and utilize half of the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of G Limited and the remaining half of the amount of Corporate Social Responsibility on the activities for the benefit of family members of employees of G Limited. As per the provision of Companies Act, 2013 this would mean that:-

(a) Total Amount spent on Corporate Social Responsibility Activities by G Limited for that financial year

(b) No amount spent on Corporate Social Responsibility Activities by G Limited for that financial year

(c) Half amount spent on Corporate Social Responsibility Activities by G Limited for that financial year

(d) Half amount spent on Corporate Social Responsibility Activities and remaining half amount spent on Other Activities by G Limited for that financial year

4. The minute book of General meetings of Alpha Limited will be kept at:

(a) That place where members of Alpha Limited will decide.

(b) That place where all employees of Alpha Limited will decide.

(c) Registered office of the company Alpha Limited.

(d) That place where senior officials of Alpha Limited will decide.

5 R purchases some goods on credit from S, payable within 3 months. After 2 months, R makes out a blank cheque in favour of S, signs and delivers it to S with a request to fill up the amount due, as R does not know the exact amount payable by him. S fills up fraudulently the amount larger than the amount payable by R and endorses the cheque to C in full payment of S's own due. R's cheque is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, C:

(a) Can claim the full amount from R

(b) Can claim the full from S

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(c) Cannot claim the amount either from R or S

(d) Can claim from S only the exact amount due from R

DIVISION B - DETAILED QUESTIONS

COMPANY LAW

The Companies Act, 2013

1. MNP Ltd. has a paid up share capital of ₹ 10 crore and free reserves of ₹ 50 crore, as on 31st March, 2019. The company made a loss of ₹ 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

2. New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013.

3. The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.

   The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

4. EFG Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held till 30.4.2019. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

5. Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

6. The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of

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meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Uttar Pradesh.

(ii) B and C, shareholders of preference shares,

(iii) D, representing Y Ltd. and Z Ltd.

(iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

7. K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

8. Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.

OTHER LAWS

The Indian Contract Act, 1872

9. Pankaj appoints Shruti as his agent to sell his estate. Shruti, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to Pankaj. Shruti buys the estate herself after informing Pankaj that she (Shruti) wishes to buy the estate for herself but conceals the existence of Granite-Mine. Pankaj allows Shruti to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of Pankaj, the principal, against Shruti, the agent. Give your answer as per the provisions of the Contract Act, 1872.

What would be your answer if Shruti had informed Pankaj about the existence of Mine before she purchased the estate, but after two months, she sold the estate at a profit of ₹ 10 lac?

The Negotiable Instruments Act, 1881

10. Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:

(i) X who obtains a cheque drawn by Y by way of gift.

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(ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(iii) M, who finds a cheque payable to bearer, on the road and retains it.

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

(v) B, who steals a blank cheque of A and forges A's signature.

The General Clauses Act, 1897

11. Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas.

Interpretation of Statutes

12. Explain the function of 'proviso' as an internal aid to construction.

SUGGESTED ANSWERS/HINTS

DIVISION A - ANSWER TO CASE SCENARIO / MULTIPULE CHOICE QUESTIONS

1. (A) **(b)**

(B) **(d)**

(C) **(c)**

(D) **(a)**

2. (A) **(d)**

(B) **(b)**

(C) **(a)**

3. **(b)**

4. **(c)**

5. **(b)**

DIVISION B - ANSWER TO DETAILES QUESTIONS

1. As per Second Proviso to Section 123 (1), in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

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(i) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

(ii) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: ₹ 2 Crores (20% of ₹ 10 Crore i.e on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ₹ 6 Crore.

This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(iii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: ₹ 48 crore (50 crore – 2 crore)

15% of paid up share capital: 1.5 crore (15% of 10 crore)

This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

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 or 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 the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Reena, his wife held equity shares of New 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, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of New Limited.

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3. According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

4. According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of EFG Ltd is for the period 1st April 2017 to 31st March 2018, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2018.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of EFG Ltd. should have been held on or before 31st December, 2018. Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

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

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Andrew will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any mis-statements in the prospectus under the following situations:

(i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or

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

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

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

6. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

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Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

7. **Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

   (a) The employee must not be a Key Managerial Personnel;

   (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.

   (c) The shares to be subscribed must be fully paid shares

   In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹ 30,000 per month and loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in K Ltd.

   Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

   i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakh.

   ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

8. As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

   The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

   Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

   In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

9. **Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent.** The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then

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the principal may claim any benefit which may have accrued to the agent from such a transaction. Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, he cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.

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

On applying the above provision in the given cases—

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

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

(iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.

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

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

11. According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly addressing

(ii) Pre-paying, and

(iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

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12. **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. *(Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765)*.

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