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FOR CA INTERMEDIATE EXAM PREPARATION

CA Intermediate 2022 Suggested Answers · Paper 2 Corporate and Other Laws (Old Scheme)

EXAM	YEAR	TYPE
CA Intermediate	2022	Suggested Answers

SUBJECT	DATE
Paper 2 Corporate and Other Laws (Old Scheme)	May 2022

PAPER – 2 : CORPORATE & OTHER LAW

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

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

Question 1

(a) MNP Limited is a registered public company having the following:

i	*Directors and their Relatives*	*18*
ii	*Employees*	*26*
iii	*Ex-Employees (Shares were allotted during employment)*	*15*
iv	*Members holding shares jointly (7 x 2)*	*14*
v	*Other Members*	*137*

The Board of Directors of MNP Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise:

i. Whether the company can be converted into a private company?

ii. Whether existing number of members need to be reduced for the proposed private company? ***(3 + 3 = 6 Marks)***

(b) (i) SKIP Limited (the Company) was incorporated on 01.04.2019. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	***Net Profit before tax***	***Net Profit after tax*** *(Ignore Income Tax computation)*
2019-20	*₹5.00 crore*	*₹3.75 crore*
2020-21	*₹7.00 crore*	*₹5.25 crore*

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

(3 Marks)

(ii) SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?

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Can the company include the dividend unpaid in the above issue of redeemable preference shares? ***(3 Marks)***

(c) (i) Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase in spite of higher rate. Afterwards, Ramu comes to know that the goods purchased belonged to Prem himself. Decide, whether Ramu is bound by ratification done?

(ii) Hari, authorises Bharat, a merchant in Mumbai, to recover dues from Bankey & Co. Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co., for recovery of the money. Explain the legal position of Deepak, referring provisions of the Indian Contract Act, 1872, related to agency. ***(2 + 2 = 4 Marks)***

(d) Examine the validity of the following statements with reference to the Negotiable Instruments Act, 1881.

(i) When payment on an instrument is made in due course, both the instrument and the parties to it are discharged.

(ii) Alteration of rate of interest specified in the Promissory Note is not a material alteration.

(iii) Conversion of the blank indorsement into an indorsement in full is not a material alteration and it does not require authentication. ***(3 Marks)***

Answer

(a) According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having prescribed minimum paid-up share capital, and which by its articles, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that following shall not be included in the number of members -

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Accordingly, total Number of members in MNP Limited are:

(i)	Directors and their relatives	18
(ii)	Joint shareholders (7x2)	7
(iii)	Other Members	137
	Total	**162**

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(i) MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.

(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

(b) (i) According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of SKIP Limited for the FY 2020-21 is ₹ 7 crore, hence, SKIP Limited is required to constitute a CSR committee during FY 2021-22 as the Net profit before tax for the FY exceeds ₹ 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (SKIP Limited was incorporated on 1.04.2019.)

   Average Net Profit since incorporation: (₹ 5 crore + ₹ 7 crore)/ 2 = ₹ 6 crore

   Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs

(ii) According to section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- with the consent of the holders of three-fourths in value of such preference shares, and
- with the approval of the Tribunal on a petition made by it in this behalf,

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issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

(c) (i) According to section 198 of the Indian Contract Act, 1872, no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

In the instant case, Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase inspite of higher rate. Afterwards, Ramu comes to know that the goods belonged to Prem himself. The ratification is not binding on Ramu.

(ii) As per section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person shall be an agent of the principal for such part of the business of the agency as is entrusted to him.

In the instant case, Hari, authorizes Bharat, a merchant in Mumbai, to recover dues from Bankey & Co. Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co. for recovery of the money.

Here, Deepak, a solicitor, is a substituted agent to act for the principal in the business of the agency, to take legal proceedings for recovering of money.

(d) (i) **When payment on an instrument is made in due course, both the instrument and the parties to it are discharged:** Valid

Reasoning: As per section 78 of the Negotiable Instrument Act, 1881, when payment on an instrument is made in due course, both the instrument and the

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parties to it are discharged subject to the provision of section 82(c). The payment on an instrument may be made by any party to the instrument. It may even be made by a stranger provided it is made on account of the party liable to pay.

(ii) **Alteration of rate of interest specified in the Promissory Note is not a material alteration:** Not valid

Reasoning: An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto. Hence, Alteration of rate of interest is material alteration.

(iii) **Conversion of the blank indorsement into an indorsement in full is not a material alteration and it does not require authentication:** Valid

Reasoning: Conversion of a blank indorsement into an indorsement in full [under Section 49 of the Negotiable Instruments Act, 1881] is not a material alteration. It has been authorised by the Act and do not require any authentication.

Question 2

(a) (i) Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:

(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?

(2) When can the Registrar refuse to register the charges the present scenario?

(4 Marks)

(ii) ABC Ltd. has declared dividend of ₹ 2/- per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ₹ 10 face value each, on which ₹ 10,000 towards call money is due. Whether the dividend amount payable to him be adjusted against such dues as per the provisions of the Companies Act, 2013? Give reasons for your answer. ***(2 Marks)***

(b) XYZ Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard. ***(4 Marks)***

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(c) Examine the validity of the following statements under the provisions of the Indian Contract Act, 1872.

(i) Creditor should proceed legal action first against the Principal Debtor and later against the surety.

(ii) A guarantee which extends to a single debt/ specific transaction is called continuing Guarantee.

(iii) Variation which is not material and beneficial to the surety will not discharge him of his liability.

(iv) If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void. ***(4 Marks)***

(d) Healthcare Services Limited (the Bidder), bids the tender floated by Super Care Hospital (the Tenderer), attaching a cheque dated 01.04.2021 for ₹ 5,00,000 towards earnest money deposit. Since the tender process was extended, the Tenderer returned the cheque expiring on 30.06.2021 to the Bidder for its resubmission after having revalidated by changing the date of the cheque to 01.07.2021. Accordingly, the revalidated cheque was resubmitted by the Bidder to the Tenderer. The cheque was presented by the Tenderer to the banker. It was dishonoured by the bank. Examine, whether the cheque altered with a new date shall be deemed to be a valid cheque binding the Bidder for payment as per the Negotiable Instruments Act, 1881? ***(3 Marks)***

Answer

(a) (i) (1) Registration by charge holder: Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.

(2) Registrar refuse to register the charges: However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

(ii) As per clause (d) of proviso to section 127 of the Companies Act, 2013, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

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Thus, ABC Ltd. can adjust the call money dues from Mr. Suresh of ₹ 10,000 against the dividend amount payable to him of ₹ 10,000 (5000 shares x ₹ 2 /- per share).

(b) Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as XYZ Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

(c) (i) Creditor should proceed legal action first against the Principal Debtor and later against the surety: Invalid

Reasoning: As per Section 128 of the Indian Contract Act, 1872, the surety's liability is co-extensive with that of Principal debtor. It's not mandatory that creditor should proceed legal action in case of default, first against the Principal debtor and later against the surety. It is on creditor to start action first either against the Principal debtor or the surety.

(ii) A guarantee which extends to a single debt/ specific transaction is called continuing Guarantee: Invalid

Reasoning: Continuing Guarantee [Section 129 of the Indian Contract Act, 1872] - A guarantee which extends to a series of transaction is called a continuing guarantee. It applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

(iii) Variation which is not material and beneficial to the surety will not discharge him of his liability: Valid

Reasoning: Based on the principle held in the *M.S Anirudhan v Thomco's Bank Ltd. AIR 1963 SC 746* that the surety's liability will not be discharged where the alteration is for beneficial to him and is not substantial in nature.

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(iv) If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void: Invalid

Reasoning: As per Section 153, a contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.

(d) An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto.

By material alteration the identity of original instrument is destroyed and those parties who had agreed to be liable on the original instrument cannot be made liable on the new contract contained in the altered instrument to which they never consented (*Gour Chandra vs Prasanna Kumar 33 Cal 812*). It makes no difference whether the alteration is made by a party who is in possession of the same, or by a stranger while the instrument was in the custody of a party, because the party in custody of instrument is bound to preserve it in its integrity. The rule is defended on the ground that no man shall be permitted to take the chance of committing a fraud without running any risk of loss by the event when it is detected.

The party who consents to the alteration as well as the party who makes the alteration are disentitled to complain against such alteration.

In the given question, the tenderer (Super Care Hospital) returned the cheque to the bidder (i.e. the drawer of cheque- Healthcare Services Limited) for its resubmission after having revalidated by changing the date of the cheque. The drawer himself altered the date of the cheque for re-validating the same instrument, he cannot take advantage of it by saying that the cheque becomes void as there was a material alteration thereto. It is always open to a drawer to voluntarily re-validate a negotiable instrument including a cheque [*Veera Exports v T. Kalavathy (2002) 1 SCC97*].

In the light of the above discussion, the cheque altered with a new date shall be deemed to be a valid cheque and thus, binding the Bidder for payment.

Question 3

(a) As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹ 10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary

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refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association. ***(5 Marks)***

(b) The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013? ***(5 Marks)***

(c) 'A' draws a cheque for ₹ 5,000 in favour of 'B'. 'A' had sufficient funds in his bank account to meet it, when the cheque ought to be presented in the bank. The bank fails before the cheque is presented. 'B' wants to claim it from 'A'. Decide, whether 'A' is liable as per the Negotiable Instruments Act, 1881. ***(4 Marks)***

(d) Explain the provision related to 'Effect of Repeal' as per the General Clauses Act, 1897.

(3 Marks)

Answer

(a) According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.

Accordingly, in the light of the stated facts, following shall be the answers:

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(i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.

(ii) According to section13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

(b) As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. [Explanation to Section 32]

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.

The company may follow the provisions of section 32 in issuing a red herring prospectus:

(1) **Red Herring Prospectus is issued prior to issue of Prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) **Filing with the registrar:** A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) **Obligations under Red Herring Prospectus vis-à-vis Prospectus:** A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) **Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer:** Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

(c) According to section 84 of the Negotiable Instruments Act, 1881, if a holder does not present a cheque within reasonable time after its issue, and the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

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In the given situation, when the cheque ought to be presented, 'A' had sufficient funds at the bank to meet it. The bank failed before the cheque was presented. Thus, the drawer ('A') is discharged, but the holder ('B') can prove against the bank for the amount of the cheque.

(d) "Effect of Repeal": According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

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

Question 4

(a) (i) ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

(ii) Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

(3 + 3 = 6 Marks)

(b) ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director. ***(2 + 2 = 4 Marks)***

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(c) The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be questioned?

(iii) Is MCA entitled to make suitable changes in the draft?

(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft? ***(4 Marks)***

(d) Does an explanation added to a section widen the ambit of a section? ***(3 Marks)***

Answer

(a) (i) According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is -

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company, though being a related parties.

Alternate Answer

According to section 2(76)(viii)(B) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is a subsidiary of a holding company to which it is also a subsidiary.

However, Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

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However, as per the mentioned Notification, clause (viii) shall not apply with respect to section 188 to a private company. Therefore, D Private Limited and E Private Limited are not related parties for the purpose of section 188.

(ii) As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company:

(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.

(2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.

(3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

(b) (i) Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

(ii) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.

Effect of non-disclosure: As per section 102(4), if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director,

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such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.

If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [Section 102(5)].

(c) The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:

(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.

(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.

(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

(d) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 5

(a) HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors[1] as per the provisions of the Companies Act, 2013.

[1] To be read as 'auditors'

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OR

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013. ***(5 Marks)***

(b) (i) Mr. Ram, a shareholder of PQR Ltd., has made a request to the company for providing a copy of minutes book of general meeting. Whether the shareholder of a company is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013. ***(3 Marks)***

(ii) Explain the provision relating to 'Credit Rating' which an 'Eligible Company' should follow to raise public deposits as per the Companies Act, 2013. ***(2 Marks)***

(c) Mr. Truth deposited 100 bags of groundnut in the factory of Mr. False for safe keeping. Mr. False mixed the groundnut bags with the other groundnut bags in the factory with the consent of Mr. Truth and consumed it to produce edible oil.

(i) Whether Mr. Truth is entitled to claim his share in the edible oil produced under the provisions of the Indian Contact Act, 1872?

(ii) What will be the consequences in case the groundnut bags were mixed without the consent of Mr. Truth under the above said Act? ***(4 Marks)***

(d) What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes. ***(3 Marks)***

Answer

(a) Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

OR

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud

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by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

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

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine.

With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.

(b) **(i)** In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company.

As Mr. Ram, in the given case, is the shareholder of PQR Ltd., so shall be entitled to receive a copy of any minutes book of general meeting.

(ii) **Obtaining of Credit Rating:** The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 read with Rule 3(8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time.

Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety, shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

(c) The given question is based on section 155, 156 & 157 of the Indian Contract Act, 1872.

(i) W.r.t. this part of the question, Mr. Truth deposited his ground nut bags for safe keeping in the factory of the Mr. False. He mixed the ground nut bags of Mr. Truth with the other ground nut bags lying in the factory with the consent of Mr. Truth and consumed the same for producing edible oils.

According to section 155 of the Indian Contract Act, 1872, if the Bailee, mixes the goods bailed with his own goods, with the consent of the bailor, both the parties

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shall have an interest in proportion to their respective shares in the mixture thus produced.

Accordingly, Mr. Truth is entitled to claim his share in the edible oil produced.

(ii) According to section 156 & 157 of the Indian Contract Act, 1872, where the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture.

In the given case, the goods were mixed without consent of Mr. Truth, and if such mixture can be separated, then Mr. False will bear the expense of separation and the damage, if any, arising from mixture.

However, in the light of given facts, as mixture of goods were consumed to produce oil, and so it cannot be separated and therefore Mr. False shall be liable to compensate Mr. Truth.

(d) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.

The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

It is a cardinal rule of interpretation that a proviso or exception 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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