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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)	November 2022

PAPER – 2: CORPORATE & OTHER LAW

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

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

Question 1

(a) *The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:*

Authorised Share Capital:	₹
1,00,000 Nos. of Equity Shares of ₹100 each	*1,00,00,000*
Subscribed and Paid-up Share Capital:	
40,000 Nos. of Equity Shares of ₹ 100 each, fully paid-up.	*40,00,000*
Share Premium Reserve	*50,00,000*
General Reserve	*30,00,000*
Balance in Profit and Loss Account	*20,00,000*
Capital Reserve (profit on sale of Fixed Assets)	*30,00,000*
8% Non-Convertible Debentures	*30,00,000*
9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period)	*20,00,000*
Short-term Cash Credit Loan from XYZ Bank Limited	*50,00,000*

(On hypothecation of stock and receivables of the Company, repayable on demand)

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

(i) *The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?*

(ii) *What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?* ***(6 Marks)***

(b) *P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co.*

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With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh.

(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹ 1,50,000.

(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.) ***(6 Marks)***

(c) Manish, a minor, lost his parents in COVID-19 pandemic. Due to poor financial background Manish was facing difficulties in maintaining his livelihood. He approached Mr. Sohel (a grocery shopkeeper) to supply him grocery items and to wait for some period for receiving his dues. Mr. Sohel did not agree with the proposal; but when Mr. Ganesh, a local person, who is a major, agreed to provide guarantee that he would pay the dues in case Manish fails to pay the amount, Mr. Sohel supplied the required groceries to Manish. After few months when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues of Manish. Mr. Ganesh refused to pay the amount on two grounds; firstly, that there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore on both the grounds the contract of guarantee is not valid.

Referring to the relevant provisions of the Indian Contract Act, 1872, decide, whether the contention of Mr. Ganesh, (the surety) is tenable? Will your answer differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors? ***(4 Marks)***

(d) Mr. A made endorsement of a bill of exchange amounting ₹50,000 to Mr. B. But, before the same could be delivered to Mr. B, Mr. A passed away. Mr. S, son of Mr. A, who was the only legal representative of Mr. A approached Mr. B and informed him about his father's death. Now, Mr. S is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. S can complete the instrument in the above scenario?

(3 Marks)

Answer

(a) The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained

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from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	**1,40,00,000**

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	**50,00,000**

Here, Short– term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting

= (A) - (B) = ₹ 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹ 90,00,000.

(ii) Issue of Debentures with an Option to Convert into Shares: According to **Section 71(1)** of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to

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convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

(b) (i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.

Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹ 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lakh. such person cannot be appointed as auditor of the company.

In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹ 1 Lakh i.e. of an amount worth ₹ 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.

(iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh, shall not be appointed as an auditor.

Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹ 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹ 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

(c) (i) Whether the contention of Mr. Ganesh (the Surety) is Tenable?

In the light of the given facts in the question, the guarantee was given by Mr. Ganesh (the surety) to Mr. Sohel that he would pay the dues in case Mr. Manish (the Principal Debtor) fails to pay the amount. However, later on it was contended by Mr. Ganesh that there was no consideration in the contract of guarantee and also that Manish is a minor and therefore the contract of guarantee is not valid.

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As per the provisions of Section 127 of the Indian Contract Act, 1872, anything done, or promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

In the given case, Mr. Ganesh has provided guarantee to Mr. Sohel for the benefit of Mr. Manish which will be treated as sufficient consideration even though there is absence of direct consideration. In other words, a guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.

Regarding the contention that Manish is a minor and therefore, the contract of guarantee will be invalid is not tenable due to the fact that Mr. Ganesh (surety) and Mr. Sohel (the creditor) are not minors. In other words, the capability of the principal debtor (being a minor) does not affect the validity of the agreement of the guarantee.

In view of the above, it can be concluded that the contention of Mr. Ganesh is not tenable.

(ii) In case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors:

The answer will differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors. In such a situation, the agreement will be treated as void from inception as the minors cannot give guarantee even with a claim for necessities.

(d) According to Section 57 of the Negotiable Instruments Act, 1881, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered. An agent can complete the instrument if he is authorized by the principal to do so. But, a legal representative is not an agent of the deceased.

The rights in the instrument are not transferred to the indorsee unless after the indorsement, the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

Hence, in the said case, Mr. S, son of Mr. A (the deceased) cannot complete the instrument which was executed by Mr. A but could not be delivered to Mr. B, because of his death.

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Question 2

(a) *TST Limited has Equity Share Capital of 10000 shares @ ₹10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.*

(4 Marks)

(b) *A company has accumulated Free Reserves of ₹75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ₹ 12 lakhs. The Board proposes a payment of dividend of ₹30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?* ***(6 Marks)***

(c) *Mr. X owes Mr. Y ₹50,000. He (Mr. X) afterwards appoints Mr. Y as his agent to sell his Flat at Bangalore and after paying himself (i.e., Mr. Y) what is due to him, hand over the balance to Mr. X. Examine, as per the provisions of the Indian Contract Act, 1872, can Mr. X revoke his authority delegated to Mr. Y?* ***(4 Marks)***

(d) *Venkat executed a promissory note in favour of Raman for ₹45 Lakhs. The amount was payable hundred days after sight. Raman presented the promissory note for sight on 4th May 2021. Ascertain the date of maturity of the promissory note with reference to the relevant provisions of the Negotiable Instruments Act, 1881.* ***(3 Marks)***

Answer

(A) **Validity of Resolution passed in the EGM called by the Requisitionists**

As per Section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.

The requisition made under sub- section 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within twenty one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that

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matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.

Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be re-imbursed to the requisitionists by the company.

In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ₹ 30,000 (each holding ₹ 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

(b) In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions of Rule 3:

Condition 1: 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.

Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Calculations For Each Condition

Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.

Condition 2: As per the facts, the Board proposes a payment of dividend of ₹ 30 lakhs i.e., 30% on the paid up capital.

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So, the Paid up Share Capital of the company = ₹ 100 Lakh

Paid-up Capital + Free Reserves = 100+ 75 = ₹ 175 Lakh

10% thereof = ₹ 17.5 Lakh

Hence the dividend to be declared is to be restricted to ₹ 17.5 Lakh.

Condition 3:

Here, Free Reserves = ₹ 75 Lakh

Proposed withdrawal for declaration of dividend ₹ 17.5 Lakh

Balance of Reserves = ₹75 Lakh- 17.5 Lakh = ₹ 57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ₹ 100 Lakh) i.e. ₹ 15 Lakh.

Thus, the company can declare a dividend of ₹ 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ₹ 100 lakh.

Hence, the proposal of company for payment of dividend of ₹ 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of ₹ 12 lakh, is invalid.

(c) According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the given question, Mr. X owed to Mr. Y ₹ 50,000.

When Mr. X appointed Mr. Y as his agent to sell his Flat and authorized him to appropriate the amount due to Mr. X out of the sale proceeds, interest was created in favor of Mr. Y and the said agency is not revocable. Thus, Mr. X cannot revoke his authority delegated to Mr. Y.

Note: The answer to the above question can also be given as per Section 203, section 204 and section 206 as follows:

Revocation of authority under the Indian Contract Act, 1872: An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent (Section 206).

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Hence, Mr. X can revoke his authority delegated to Mr. Y if Mr. Y has not exercised any authority towards the act authorized by Mr. X and no obligation arises out of it.

(d) Maturity of Negotiable Instrument

Where a bill or note is payable at a fixed period after sight, the maturity of a note or bill is the date on which it falls due. It's a time instrument and is at maturity on the third day after the day on which it is expressed to be payable. Thus, a time instrument payable after sight is allowed three days grace period. [Section 22 of the Negotiable Instrument Act, 1881 (the Act)].

Calculation of Maturity (Section 23 of the Act)

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight, the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight.

Section 24 of the Act states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

In the present case, the day of presentment for sight is to be excluded i.e. 4th May, 2021. The period of 100 days will start from 5th May, 2021 i.e. May -27 days, June - 30 days July - 31 days and August 12 days (Total 100 days) and ends on 12th August. After 3 days of grace period added to it, it falls due on 15th August which is a public holiday. When the day on which a promissory note or bill of exchange is at maturity is a Public holiday, the instrument shall be deemed to be due on the next preceding business day.

Accordingly, the date of maturity of the promissory note executed by Venkat will fall due on 14th August, 2021 (i.e. the next preceding business day.)

Note: The concept of after sight is not usually applied to Promissory notes. Therefore, a Promissory note payable 100 days after sight would have to be presented only after 100 days for payment. As per the question, it appears that promissory note is presented for payment (after 100 days) on 4th May 2021. Now the maker i.e. promisor would be required to pay it within the usual 3 grace days calculated from the 4th May 2021. This would be on 7th May 2021. Therefore, in the given case, the date of Maturity shall be 7th May 2021 (4th May 2021+ 3 days)."

Question 3

(a) Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

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(i) *ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.*

(ii) *CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.*

(iii) *PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013.* ***(5 Marks)***

(b) *The Government of Rajasthan and Haryana are jointly holding 58% of the paid-up Equity Share Capital of Moon Ltd. The Audited financial statements of Moon Ltd. for the financial year 2021-22 were placed at its Annual General Meeting held on 31st August, 2022. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not filed its financial statements to the Registrar, Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 5th October, 2022 whereat the accounts were adopted. Thereafter, Moon Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 25th October, 2022.*

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Moon Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar. ***(5 Marks)***

(c) *A bill of exchange was drawn by Mr. G on Mr. H for ₹50,000 towards the value of goods purchased by Mr. H from Mr. G. Mr. H accepted the bill and returned it back to Mr. G. After that Mr. G handed over the bill to his supplier Mr. K to settle the amount of a transaction. On the due date, Mr. K presented the bill before Mr. H for payment. Mr. H denied to make payment and the bill was dishonoured. After five days of the date of dishonour of the bill, Mr. K gave a written notice of dishonour by post with acknowledgement to Mr. G without knowing the fact that Mr. G had passed away one day back. After one month, thereafter, Mr. K claimed the amount from Mr. L, the only son of Mr. G, who was the only legal representative of Mr. G; Mr. L contended that the notice of dishonour was neither served to him nor he had received the notice of dishonour which was sent by Mr. K addressing to his father and therefore, he is not liable for the amount of the bill. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, advise Mr. K., whether the contention of Mr. L is tenable.*

Would your answer differ in case Mr. L contended that even though he received the notice of dishonour addressed to his father, since it was not addressed to him, he is not liable for the amount of the bill? ***(4 Marks)***

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(d) Explain the "grammatical" and "logical" interpretation and state the situations where the courts adopt them while interpreting the Statutes in India. ***(3 Marks)***

Answer

(a) According to Section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange.

RULE 2A: According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.

(ii) CHG Limited is an unlisted company.

(iii) PRS Limited is an unlisted company.

(b) According to first provision to Section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

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In the instant case, the accounts of Moon Ltd. were adopted at the adjourned AGM held on 5th October, 2022 and filing of financial statements with Registrar was done on 25th October, 2022 i.e. within 30 days of the date of adjourned AGM. However, Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August 2022.

Hence, Moon Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

(c) Dishonour by Non-Payment:

According to the Negotiable Instruments Act, 1881, a promissory note, bill of exchange and cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same (Section 92).

As per the requirement of the Negotiable Instruments Act, 1881, in line with the given facts, notice of dishonour must be given to all parties other than the acceptor of the bill, whom the holder seeks to make liable.

Notice of dishonour to the acceptor of a bill is not necessary as per Section 93 of the Act. Here the acceptor is primarily liable upon the instrument, on the due date and at the proper place. It is they who dishonour the instrument by no-acceptance or non-payment and notice to them will merely be notice of fact already known to them.

When negotiable instrument is dishonoured by non-payment, the holder must give a notice of dishonour to the drawer or his previous holder in order to make them liable on the instrument.

In order to make the drawer liable on dishonour by drawee/acceptor, it is necessary that a notice of dishonour must have been given to him.

When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient (Section 97).

1st Part: In the given question, at the time of giving notice of dishonour by post with acknowledgement to Mr. G (the drawer), Mr. K (the holder of the bill) was not aware of the death of Mr. G. So, the notice served addressed to him, was sufficient as per Section 97 of the Negotiable Instruments Act, 1881. Hence, the contention of Mr. L (the legal representative of Mr. G) is not tenable and he is liable on the bill.

2nd Part: Where Mr. L, received the notice of dishonour addressed to his father though not addressed to Mr. L

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In a case, where Mr. L, received the notice of dishonour addressed to his father though not addressed to Mr. L, then also he will remain liable for the amount of bill. Hence, the answer will not differ.

(d) Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In other words, the emphasis in grammatical interpretation is on "what the law says" and the logical interpretation seeks on the other hand, seeks to ascertain " what the law means".

Application of the principles in the Court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The Court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the Court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the Court is to administer the law as it stands rather it is just or unreasonable.

The Court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that is ostensibly just or reasonable.

However, if there are two possible constructions of a clause, the Courts may prefer the logical construction.

Question 4

(a) Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to ₹10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013? ***(6 Marks)***

(b) Perfect Limited Company raised the secured deposit of ₹100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	*₹ 60 crores*

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Plant & machinery	*₹ 20 crores*
Factory Shed	*₹ 20 crores*
Trade Mark	*₹ 20 crores*
Goodwill	*₹ 25 crores*

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014. ***(4 Marks)***

(c) *Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?* ***(4 Marks)***

(d) *Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.* ***(3 Marks)***

Answer

(a) According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in Section 61 (1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to ₹ 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

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How the company can alter its Share Capital

The company has to alter its memorandum in its general meeting as per the procedure contained in Section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

(b) As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

(c) 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

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(ii) Pre-paying, and

(iii) Posting by registered post.

Case Laws

(i) In ***Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69,*** it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In ***Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604*****,** it was held that where a notice is sent by 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.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

(d) The Rule of Ejusdem Generis will not apply in the following situations:

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

Question 5

(a) Aarna Ltd. was dealing in export of cotton fabric to specified foreign countries. The company was willing to purchase cotton fields in Punjab State. The prospectus issued by the company contained some important extracts of the expert report. The report was found untrue. Mr. Nick purchased the shares of Aarna Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Would Mr. Nick have any remedy against the company? State the circumstances where an expert is not liable under the Companies Act, 2013.

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OR

The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(i) Whether refusal of document by the company is valid?

(ii) Whether Suresh can claim damages for it? ***(5 Marks)***

(b) Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges. ***(5 Marks)***

(c) Kartik took his AC to Pratik, an electrician, for repair. Even after numerous follow ups by Kartik, Pratik didn't return the AC in reasonable time even after repair. In the meantime, Pratik's electric shop caught fire because of short circuit and AC was destroyed. Decide, whether Pratik will be held liable under the provisions of the Indian Contract Act, 1872.

(4 Marks)

(d) What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897? ***(3 Marks)***

Answer

(a) (i) Whether Mr. Nick has any Remedy?

Under Section 35 (1) of the Companies Act 2013 (the Act), 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. Nick purchased the shares of Aarna Limited on the basis of the expert's report published in the prospectus. Mr. Nick can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Since, Mr. Nick did not suffer any loss due to purchase of such shares, he cannot claim any compensation for any loss or damage. Further, Section 35 of the Act also mentions punishment prescribed by Section 36 of the Act i.e. punishment for fraud under Section 447.

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(ii) Circumstances when an expert is not liable: An expert will not be liable for any mis-statement in a prospectus under the following situations:

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

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

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

(iv) Under Section 35 (2) (c) of the Act: It states 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) of the Act to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

(OR)

(i) Serving of document to Company

In terms of Section 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

- registered post, or
- speed post, or
- courier service, or
- leaving it at its registered office, or
- means of such electronic or other mode as may be prescribed.

In the instant case, Suresh dispatches some document to AB Ltd. by courier whereas the AOA of said company provides that documents may be served upon

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the company only through Speed Post. AB Ltd. did not accept the documents on the ground that it is in violation of the AOA.

Taking into account the above provision,

(i) Refusal of documents by AB Ltd. is not valid as sending of documents by courier to AB Ltd. is complying with the provisions given under section 20(1) of the Act.

(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, YES, he can claim the damages for any loss occurred to him.

(b) In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

(c) The legal provisions which dealt with the return of goods under the Indian Contract Act, 1872 (the Act) is covered in Sections 160 and 161 of the Act, whereby, 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.

Further, Section 161 of the Act clearly says that where a bailee fails to return the goods as per term given under Section 160, within the agreed time, he shall be responsible to

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the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

In the instant case, Pratik did not return the AC in reasonable time even after repair, in spite of numerous follow ups by Kartik.

In the light of the said provision, Pratik shall be held liable for the destruction of goods (i.e. AC) on his failure to return to Kartik within the reasonable time.

(d) "Official Gazette" [Section 3(39) of the General Clauses Act, 1897]: 'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of India, or

(ii) The Official Gazette of a state.

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