

**Mock Test Paper - Series I: November, 2024**

**Date of Paper: 19<sup>th</sup> November, 2024**

**Time of Paper: 2 P.M. to 5 P.M.**

**INTERMEDIATE COURSE: GROUP – I**

**PAPER – 2: CORPORATE AND OTHER LAWS**

**Time Allowed – 3 Hours**

**Maximum Marks – 100**

1. *The question paper comprises two parts, Part I and Part II.*
2. *Part I comprises Case Scenario based Multiple Choice Questions (MCQs)*
3. *Part II comprises questions which require descriptive type answers.*

**PART I – Case Scenario based MCQs (30 Marks)**

**Part I is compulsory**

**Case Scenario 1**

Prakash Limited and Vasudha Private Limited (VPL) were incorporated in January 1999 by Mr. Vicky Tripathi and his family members. Both the companies are engaged in the business of manufacturing machineries used in agricultural sector. Mr. Vicky Tripathi and his younger brother Vinay Tripathi actively participate in the daily operations of both the companies. Vasudha Private Limited is wholly owned by Tripathi family, while Tripathi family has a majority stake of 51% in Prakash Limited.

Due to the poor economic conditions in the agriculture sector and shifting of the farmers' focus to more advanced farming techniques, the sales of Prakash Limited is dipping and its bottom line has been in the red for the last couple of years. The unabsorbed loss of Prakash Limited for the current financial year is ₹ 9.8 crore. Prakash Limited didn't pay any dividends during the last four years. Prakash Limited has accumulated profit in the form of free reserves of ₹ 180 crore whereas paid-up share capital is 918 crore as per its latest audited financial statement and loss of ₹ 9.8 crore has not been deducted from such amount of free reserves. Since pressure from shareholders of the free float is mounting, management at Prakash Limited decided to pay dividend this year out of accumulated profit. Finally, the dividend was declared on 31<sup>st</sup> August 2024. Some of the dividend remained unpaid as on 30<sup>th</sup> September 2024, on account of operation of law; this was transferred to unpaid Dividend Account and a statement containing only the names of such beneficiaries was hosted on the website of the company on 9<sup>th</sup> November 2024.

Vasudha Private Limited is a mid-sized unlisted entity, with few branches abroad and is not required to appoint an independent director under section 149(4). During the immediately preceding F.Y., its net worth was ₹ 280 crore, turnover was ₹ 590

crore and net profit was ₹ 45.8 crore. The profits and other information for the immediately preceding three years are given below:

Particulars	Year ended 31.3.2024 (₹ in crore)	Year ended 31.3.2023 (₹ in crore)	Year ended 31.3.2022 (₹ in crore)
Net Profit for the year as per section 198 (in accordance with applicable provisions)	41.6	42.9	28

The Board of Directors of Vasudha Private Limited is not clear whether they have to compulsorily form a CSR committee. In order to avoid adverse legal consequences, Vasudha Private Limited constituted a CSR committee comprising of two (2) non-executive directors and one (1) executive director who was appointed as chairperson of the committee.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under:

- In case of Prakash Limited, regarding the unpaid dividend, which of the following statements is correct?
  - Prakash Limited is guilty, of non-payment of dividend, because some of the dividends remain unpaid even after 30 days of declaration.
  - Prakash Limited is guilty, because the list of beneficiaries of unpaid dividend is hosted on the website after 30 days from the date it falls in the category of unpaid dividend.
  - Prakash Limited is guilty, because the list of beneficiaries does not contain the latest known address of beneficiaries and the amount unpaid.
  - Prakash Limited is not guilty, because it has full-filled all the provisions of law pertaining to unpaid dividend.
- During the current year, is Vasudha Private Limited required to constitute CSR committee under the provisions of the Companies Act, 2013?
  - No, because it is a private company
  - No, because it is an unlisted company and it has net-worth less than ₹ 500 crore
  - Yes, because despite being unlisted company its turnover is above ₹ 500 crore
  - Yes, because the company meets the threshold criteria having net profits exceeding ₹5 crore in the immediately preceding financial year

3. What is the implication of the fact that Prakash Limited has not paid dividends for the last four years while having free reserves?
  - (a) The company is in violation of the Companies Act, 2013, for not declaring dividends.
  - (b) The shareholders can legally challenge the management for not utilizing free reserves for dividends.
  - (c) There is no legal obligation to declare dividends even if the company has free reserves.
  - (d) The company must now use all of its free reserves to pay dividends to satisfy shareholder demands.
4. Considering the legal provisions regarding the constitution of CSR committee and the one constituted by Vasudha Private Limited, state which of following the statements hold truth?
  - (a) Constitution of the committee is invalid because it doesn't consist of an independent director.
  - (b) Constitution of the committee is invalid because its chairperson is an executive director.
  - (c) Constitution of the committee is valid because it depends purely upon the discretion of management.
  - (d) Constitution of the committee is valid because company is not required to appoint an independent director.
5. What is the minimum amount to be spent by Vasudha Private Limited on CSR activities for F.Y. 2024-25?
  - (a) ₹ 89.06 Lakh
  - (b) ₹ 78.20 Lakh
  - (c) ₹ 75.00 Lakh
  - (d) ₹ 73.80 Lakh

### Case Scenario 2

Rahul and Meenakshi, two young entrepreneurs, founded "Educom Innovators LLP" under the Limited Liability Partnership Act, 2008, with a focus on providing digital education solutions. Rahul brought technical expertise, while Meenakshi managed the business operations. According to the LLP Agreement, both contributed equally and shared profits equally. After two years of growth, they decided to admit Anshul, an industry expert, as a partner to expand their reach. Anshul agreed to contribute additional capital and bring industry contacts. However, shortly after joining, Anshul discovered that certain key compliance filings, including Form 11 (Annual Return) and Form 8 (Statement of Accounts and Solvency), were pending. Concerned, Anshul wanted to understand his liability and insisted that the LLP immediately address the compliance issues. Meanwhile, Rahul proposed to amend the LLP Agreement to reflect Anshul's new profit-sharing ratio and allocate specific decision-making powers to him. As they worked through these matters, they consulted a legal advisor to

understand how the Limited Liability Partnership Act, 2008, impacted their responsibilities, liabilities, and compliance obligations.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8, of **2 marks each**) given herein under:

6. When Anshul joined Educom Innovators LLP, he discovered that key compliance filings, including the Annual Return and Statement of Accounts and Solvency, were pending. What is Anshul's liability as a newly admitted partner concerning these past compliance lapses?
  - (a) Anshul has no liability for past compliance lapses since he was not a partner when they occurred.
  - (b) Anshul shares equal liability for past compliance lapses because he is now a partner in the LLP.
  - (c) Anshul is only liable if the LLP Agreement specifically assigns responsibility to him for compliance.
  - (d) Anshul's liability for past compliance is limited to his capital contribution in the LLP.
7. In light of Anshul's concern about the pending compliance filings, which of the following best describes the responsibilities of the partners in Educom Innovators LLP regarding compliance with the LLP Act, 2008?
  - (a) Only the designated partners are responsible for ensuring compliance with filing obligations under the LLP Act.
  - (b) All partners, including new partners like Anshul, are equally responsible for compliance, regardless of the LLP Agreement.
  - (c) Compliance responsibilities can only be assigned to one partner, who will bear full accountability.
  - (d) The legal advisor is responsible for handling compliance, and the partners have no liability once they hire legal counsel.
8. Suppose in the given scenario, Educom Innovators LLP fails to file the Statement of Account and Solvency or Annual Return for any five consecutive financial years, which of the following could occur?
  - (a) Educom Innovators LLP may be wound up the Tribunal
  - (b) Takeover of Educom Innovators LLP by the persons appointed by the Registrar of Companies
  - (c) Revocation of all partner rights until filings are complete
  - (d) The losses for these 5 consecutive years shall be shared equally by all the partners irrespective of the profit sharing ratio as decided in the LLP agreement.

### Case Scenario 3

In 2024, New Limited, a company specializing in international trade, needed to send an important notice to one of its clients, Mr. A, regarding a contractual amendment. According to the company's internal regulations and the contract terms, the notice had to be served by post.

On April 15, 2024, the company's legal department prepared the notice and addressed it to Mr. A at his registered address. The notice was properly addressed, prepaid, and sent via registered post with acknowledgment due to ensure the highest level of confirmation for delivery.

A few days later, on April 20, 2024, the notice was returned with a stamp indicating that it was "not claimed" by Mr. A. The legal department recorded the return of the notice and noted the endorsement.

The company's legal advisor referred to past case laws for similar scenarios to ensure that the notice was considered legally served under section 27 of the General Clauses Act, 1897. They reviewed the following precedents:

*United Commercial Bank v. Bhim Sain Makhija*: It was noted that merely sending a notice by registered post without the acknowledgment due did not provide sufficient legal protection for proving service.

*Jagdish Singh v. Natthu Singh*: This case demonstrated that if a notice sent by registered post was returned with a refusal endorsement, it was considered served.

*Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh*: It was established that if a notice sent by registered post to a proper address was returned with an endorsement like "not claimed", it was deemed served unless proven otherwise.

On the basis of above facts and by applying applicable provisions of the General Clauses Act, 1897 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 9-11 of **2 marks each**) given herein under:

9. According to section 27 of the General Clauses Act, 1897, what three conditions must be fulfilled for a service by post to be deemed effective?
  - (a) Properly addressed, Pre-paid, and Posting by ordinary post
  - (b) Properly addressed, Pre-paid, and Posting by registered post
  - (c) Properly addressed, Pre-paid, and Sending by courier
  - (d) Properly addressed, Pre-paid, and Hand delivery
10. In the case of *United Commercial Bank v. Bhim Sain Makhija*, why was the presumption of service under registered post found to be insufficient?
  - (a) Because the notice was sent by ordinary post
  - (b) Because the notice was sent by registered post but not with acknowledgment due
  - (c) Because the address was incorrect
  - (d) Because the recipient did not respond

11. What does the case of *Jagdish Singh v. Natthu Singh* demonstrate about the service of notice?
- (a) Notice sent by registered post without return endorsement is invalid
  - (b) Notice sent by registered post and returned with refusal endorsement is deemed served
  - (c) Notice sent by ordinary post is deemed served if not returned
  - (d) Notice served by hand delivery is always valid

### Independent case scenarios

12. ABC Private Limited is a project engineering, procurement and construction company. The company has bagged a contract from the Government of State of Kerala for construction of Water Dam. The company has involved a project consultancy firm situated in Australia for preparing techno-economic feasibility report to enable it to start construction work of dam. The company had paid USD 7,000,000 to vendor of Australia.

The company also availed the services of Software Company situated in Denmark for the migration of its accounting software from SAP to Oracle for which the company had paid USD 2,000,000 to the software company.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned statement is correct:

- (a) The company can make payment of USD 7,000,000 and USD 2,000,000 without any approval.
  - (b) The company can make payment of USD 7,000,000 without any approval and USD 2,000,000 after obtaining prior approval of the Reserve Bank of India (RBI).
  - (c) The company can make payment of USD 7,000,000 and USD 2,000,000 after obtaining prior approval of RBI.
  - (d) The company can make payment of USD 7,000,000 after obtaining prior approval of RBI and USD 2,000,000 without any approval. **(2 Marks)**
13. Mr. Narain Srinivas had enrolled himself for management course of three years with IOL, Mumbai. Out of three years, two years of educational course would be provided at the campus of IOL, Mumbai and one year of educational course would be provided at University of Auckland under student exchange program. Mr. Narain Srinivas is required to pay tuition fee of ₹10 lakh directly to IOL, Mumbai for two years course and USD 200,000 to University of Auckland.
- Mr. Narain had left India on 20<sup>th</sup> August 2022 to complete his degree from University of Auckland. In the last month of final year of the course, he got an offer from one of the reputed company situated in Auckland and had accepted the offer and he decided to work there. On 1<sup>st</sup> September 2023, Mr. Narain had visited India for 30 days to meet his family and on 1<sup>st</sup> October 2023 had left India to carry on his employment.

Considering the provisions of Foreign Exchange Management Act, 1999, which of the below mentioned options correctly determined the residential status of Mr. Narain Srinivas:

- (a) Mr. Narain Srinivas to be treated as resident in India for Financial Year (FY) 2023-2024 and FY 2024-2025.
- (b) Mr. Narain Srinivas to be treated as resident in India for FY 2022-2023 and FY 2023-2024.
- (c) Mr. Narain Srinivas to be treated as non-resident for FY 2023-2024 and FY 2024-2025 as he left India for higher studies.
- (d) Mr. Narain Srinivas to be treated as resident in India for FY 2023-2024 since he stays in India for more than 182 days and non-resident for FY 2024-2025. **(2 Marks)**

14. Green Tree Limited is planning to issue debentures to the public and, as per the legal requirements, must appoint a debenture trustee before making an offer. The company is considering several individuals for this role:

- 1. Mr. Sharma, who owns a small number of shares in Green Tree Limited as an investor.
- 2. Ms. Kapoor, who previously lent ₹ 5,000 to Green Tree Limited and is currently a lender.
- 3. Mr. Verma, who has provided a personal guarantee to ensure the repayment of the debentures issued by Green Tree Limited.

Based on the provisions of the Companies Act, 2013 and relevant rules, who among the following is eligible to be appointed as a Debenture Trustee for Green Tree Limited?

- (a) Only Mr. Sharma.
- (b) Only Ms. Kapoor
- (c) Only Mr. Verma
- (d) None of Mr. Sharma, Ms. Kapoor or Mr. Verma are eligible to be appointed as Debenture trustee of Green Tree Limited. **(2 Marks)**

15. Best Limited initially created a charge in favor of LKJ Bank for a financial facility. This charge was duly registered. A few months later, LKJ Bank enhanced the credit facility by an additional ₹ 40 crore. However, due to an oversight, Best Limited failed to register the modification to the original charge with the Registrar of Companies. The company has now realized this error and is concerned about the potential impact on its records and compliance.

As per the provisions of the Companies Act, 2013, what steps should Best Limited take to correct the situation regarding the unregistered modification of the charge?

- (a) Ignore the oversight since the original charge was registered.
- (b) Re-register only the original charge with the updated facility amount.



- (c) File an application with the Central Government for rectification of the Register of Charges.
- (d) Contact LKJ Bank to withdraw the enhanced facility until the registration is completed. **(2 Marks)**

### **PART – II Descriptive Questions (70 Marks)**

*Question No.1 is compulsory.*

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) Alpha Limited (listed on Stock Exchange) was incorporated on 1<sup>st</sup> October, 2019 with a paid-up share capital of ₹ 200 crore. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 5 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old? **(5 Marks)**
- (b) Examine the following situations in the light of the Companies Act, 2013:
  - (i) Mr. Prem, a Chartered Accountant, has been appointed as an auditor of A Limited in the Annual General Meeting of the company held in September 2023, in which he accepted the assignment. Subsequently, in January 2024 he joined as a partner in the consultancy firm where Mr. Ajay is also a partner. Mr. Ajay is also working as a Finance Executive of A Limited.
  - (ii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹ 1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role? **(5 Marks)**
- (c) Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
  - (i) A requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.
  - (ii) B requires U.S. \$ 2,000 for payment related to call back services of telephones. **(4 Marks)**
2. (a) Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Romit paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)? **(5 Marks)**



- (b) MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'.
- The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Explain the following with reference to the provisions of the General Clauses Act, 1897:
- (i) Movable Property
  - (ii) Oath **(4 Marks)**
3. (a) Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non profit organization)? **(5 Marks)**
- (b) Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 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. **(5 Marks)**
- (c) Does an explanation added to a section widen the ambit of a section? **(4 Marks)**
4. (a) Anoj Limited declared a final dividend to its shareholders at the Annual General Meeting on 1st August, 2024. As per the decision, the dividend payment was to be made within the stipulated 30-day period. However, due to internal financial constraints, the company failed to pay the declared dividend and did not dispatch the dividend warrants to the shareholders within the required timeframe. The default continued until 15th October, 2024, leading to shareholder complaints.
- In light of this scenario, what specific punishments and liabilities could the company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (b) Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (c) What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes. **(4 Marks)**

5. (a) Kishore, Kanshik, Yuvan and Bhora were partners in ABC & Associates LLP. Yuvan resigned from the firm effective from 11<sup>th</sup> November, 2024 but this was not informed to the Registrar of Companies by the Limited Liability Partnership or Yuvan. Whether Yuvan will still be liable for the loss of firm of the transactions entered after 11<sup>th</sup> November, 2024? Give your answer as per the provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**
- (b) The auditor of ABC Limited (not a government company) has resigned on 31<sup>st</sup> December, 2023, while the Financial year of the company ends on 31<sup>st</sup> March, 2024. Explain how such an auditor shall be appointed, as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897. **(4 Marks)**
6. (a) Examine the validity of the following decision of the Board of Directors with reference to the provisions of the Companies Act, 2013:
- In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10<sup>th</sup> of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll. **(5 Marks)**

**OR**

- (a) ABC Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Raj, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? **(5 Marks)**
- (b) Explain the provisions of the Companies Act, 2013 [read along with the Companies (Registration of Foreign Companies) Rules, 2014] in respect of 'Audit of accounts of foreign company'. **(5 Marks)**
- (c) Explain the meaning of term 'Current Account transactions' as defined under the Foreign Exchange Management Act, 1999. **(4 Marks)**

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**ANSWER TO PART – I CASE SCENARIO BASED MCQS**

1. (c)
2. (d)
3. (c)
4. (d)
5. (c)
6. (a)
7. (a)
8. (a)
9. (b)
10. (b)
11. (b)
12. (b)
13. (c)
14. (d)
15. (c)

**ANSWERS OF PART – II DESCRIPTIVE QUESTIONS**

1. (a) **Sweat equity shares of a class of shares already issued.**

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance

with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders.

Alpha Limited can issue sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

- (b) (i) Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Section 141(4) provides where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in section 141(3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

In the present case, Mr. Prem, an auditor of A Limited, joined as partner with consultancy firm where Mr. Ajay has become a partner and Mr. Ajay is also the Finance executive of A Limited. Hence, Mr. Prem has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of A Limited.

- (ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds 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.

In the present case, Mr. Tom is holding security of ₹ 1,00,000 in the B Limited, therefore, he is not eligible for appointment as an auditor of B Limited.

- (c) Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

Accordingly,

- (i) It is a current account transaction, where A is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. B cannot obtain US \$ 2,000 for the said purpose.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

2. (a) Rule 2(1)(c) of *the Companies (Acceptance of Deposit) Rules, 2014*, states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.

In the instant case, ₹ 5,30,000 was received by PQR Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Romit, who draws an annual salary of ₹ 5,00,000 under a contract of employment.

Accordingly, amount of ₹ 5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of the Act, as the amount received from Mr. Romit is more than his annual salary of ₹ 5,00,000.

- (b) As per section 2(43) of the Companies Act, 2013, free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves.

- (c) (i) **Movable Property**

According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

- (ii) **Oath**

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

3. (a) As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an

association of persons proposed to be registered under the Companies Act, 2013, as a limited company:

- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits (if any) or other income in promoting its objects; and
- intends to prohibit payment of any dividend to its members.

**(b) 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 21 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 matter on a day not later than 45 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 in which the meeting is called and held by the Board.

Sub-section (6) of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

In the given case, meeting called by requisitionists 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. Jai and Mr. Narayan holding ₹ 60,000 (each holding ₹ 30,000) 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.

- (c) 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 be 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.
4. (a) According to section 127 of the Companies Act, 2013, in case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:
- (i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.
  - (ii) The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (b) **Financial Year:** According to section 2(1)(l) of the Limited Liability Partnership Act, 2008, "Financial year", in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.
- However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.
- (c) 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*).
5. (a) According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless:
- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or



- (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Yuvan will still be liable for the loss of firm of the transactions entered after 11<sup>th</sup> November, 2024.

- (b) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting (AGM), in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (c) **Good Faith:** According section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

- 6. (a) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (ii) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

In the given question, 80 members present in person or by proxy holding more than  $\frac{1}{10}$ th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.

**OR**

- (a)** Under section 102(2)(b) of the Companies Act, 2013, in the case of any general meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:

- (1) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
  - (i) every director and the manager, if any;
  - (ii) every other key managerial personnel; and
  - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (2) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

**(b) Audit of accounts of foreign company**

According to the Companies (Registration of Foreign Companies) Rules, 2014,

- (i) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) of the Companies Act, 2013 and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.
- (ii) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company.

- (c) According to section 2(j) of the Foreign Exchange Management Act, 1999, 'Current Account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
  - (ii) payments due as interest on loans and as net income from investments.
  - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
  - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children.