Addendum Questions – Jan'26

This file covers Chapter-wise **EXTRA questions** of Sept'25 exams, RTP Jan'26, MTP 1 and 2 of Jan'26 along with answers which needs to be solved over and above The Ultimate Solution QB Edition 5.

Chapter 3 Prospectus

Question 1 Sept'25 – 5 marks

Sridha Bookmarks Ltd. a public limited company engaged in the 5 publication of books related to labour and industrial laws is planning to raise ₹ 10 Crore from the public, to fund its upcoming projects.

Sridha Bookmarks Ltd. has assigned two different merchant bankers namely ZFG & Associates and Bull Investments Ltd. to act as intermediaries for 60% of the above fund and the rest to be directly issued to Mr. Kuber an investment banker who intends to offer the shares for sale (OFS) to the public through inviting bids above the floor price at the stock exchange platform.

ZFG & Associates is a partnership firm and were allotted equity shares worth ₹ 4 Crore on 01.04.2024 to be sold by them to retail investors.

Bull Investments Ltd. a company by incorporation were allotted equity shares of ₹ 2 Crore for the above purpose as well on the same date.

The offer documents were issued by ZFG & Associates and Bull Investments Ltd. on 10.10.2024 and 25.09.2024 respectively. The offer document in case of Bull Investments Ltd. was signed by only one director of such company. Both the intermediaries have paid off the full consideration to Sridha Bookmarks Ltd. till date of offer to the public.

Mr. Kuber to whom 40% of the balance shares were issued, further offered to the public shares through an offer document. The Board of Directors of Sridha Bookmarks Ltd. have opposed such offer document claiming that the same does not contain the name of the person or persons or entity bearing the cost of making such offer of sale.

In view of provisions of the Companies Act, 2013:

(i) Whether the offer for sale made by the intermediaries namely ZFG & Associates and Bull Investments Ltd. is valid at law?

(ii) Whether the objection made by the Board of Directors about defect in the offer document issued by Mr. Kuber sustain?

Answer

(i) As per the provision of section 25(1) of the Companies Act, 2013, where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.

As per the provision of section 25(2), for the purposes of this Act, it shall, unless the contrary is proved, it shall be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown:

(a) that an offer of the securities or of any of them for sale to the public was made within six

months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

As per the provision of section 25(4), where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.
Let us examine the situation in terms of the provision of Section 25(2) and Section 25(4).

Here, ZFG & Associates and Bull Investments Ltd., the two merchant bankers were allotted shares by Sridha Bookmarks Ltd. On the same day, i.e. 01.04.2024. Whereas ZFG & Associates issued the offer documents on 10.10.2024, i.e. beyond the period of six months after the allotment, Bull Investments Ltd. issued the offer documents on 25.09.2024, i.e. within the stipulated period of six months after the allotment.

Both the intermediaries have paid off the whole consideration to Sridha Bookmarks Ltd. till date of offer to the public.

The offer document was signed by only one director of Bull Investments Ltd., whereas at least two directors were required to sign the same.

Offer of sale made by the intermediary (of Sridha Bookmarks Ltd.), ZFG & Associates is not in compliance with the requirements of section 25(2) since it issued the offer documents on 10.10.2024, i.e. beyond the period of six months after the allotment and therefore is invalid.

Whereas offer of sale made by the intermediary (of Sridha Bookmarks Ltd.) Bull Investments Ltd. is also invalid due to absence of signature of at least 2 directors thus not meeting the requirements mentioned above in the section 25(4).

(ii) Rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with the offer of Sale by Members.

As per sub-rule (2) of the above Rule, the prospectus issued under section 28 shall disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

Since the offer document issued by Kuber did not contain the name of the person or persons or entity bearing the cost of making such offer for sale, the offer document will be treated as defective and therefore the objection raised by the Board of Directors in this regard will be valid.

Chapter 4 Share Capital & Debentures

Question 1 Sept'25 – 5 marks

Forward Troopers Ltd. Is a public limited company engaged in the manufacturing of wearable protective gear and accessories including helmets and shields for supply to the armed forces in the country. It is a subsidiary of Security Troopers Ltd. The financial position of Forward Troopers Ltd. as per the latest audited Balance Sheet is as follows:

Fully paid-up Equity Share-capital	₹ 1145 Crore
Reserve & Surplus (Available for payment of dividend)	₹ 1012 Crore
Loan from GHB Pvt. Ltd. Bank	₹ 120 Crore
Sundry Creditors	₹ 14 Crore

The board of directors of Forward Troopers Ltd. have planned upon the following schemes of financial assistance to facilitate the purchase of its shares by its employees:

1) To create an institution in form of a Trust which would be responsible for the purchase of shares of Forward Troopers Ltd. with help of a loan of ₹110 Crore by the aforesaid company itself. The trustee therein would purchase the shares worth the above-mentioned amount on behalf of employees in accordance with an employee share scheme.

2) To provide loan directly to the employee to the maximum of their 5 months' salary to enable them to buy fully paid shares in Security Troopers Ltd.

Mr. Strong one of the directors has although approved the first scheme but have opposed the second one, claiming that the employees can be granted loan for purchase of Forward Troopers Ltd. but not of its holding company.

Considering provisions under the Companies Act, 2013 along with the applicable rules/regulations, answer the following:

(i) The validity of the decision by the Board of directors of Forward Troopers Ltd. to provide a loan worth ₹110 Crore to the trust to aid the employees to buy its shares.

(ii) The validity of the contention of Mr. Strong on grant of loan for purchase of shares of Security Troopers Ltd.

Answer

(i) As per the provision of section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

But as per the provision of section 67(3)(b), the above provision of section 67(2) shall not apply to the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.

As per Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014, which deals with the provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees, states that:

Rule 16 (1)- A company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with some conditions including that the scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing special resolution in a general meeting and the value of shares to be purchased or subscribed in the aggregate shall not exceed five per cent, of the aggregate of paid up capital and free reserves of the company.

In terms of the provisions of section 67(2), section 67(3)(b) read with the Rule 16 (1) as stated above, the value of shares that can be purchased or subscribed in the aggregate shall not exceed ₹107.85 crore, i.e. [5% of (₹1145+ ₹1012) crore]. Therefore, the decision by the Board of Directors of Forward Troopers Limited suggested to provide a loan of ₹ 110 crore to the Trust (responsible for purchase of shares of the Company itself), to aid the employees to buy its shares is not valid as the amount is beyond the maximum permissible limit.

(ii) As per the provision of section 67(3)(c), the above provision of section 67(2) shall not apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
In terms of the above provision, the contention of Mr. Strong opposing the plan of the Board of Directors of Forward Troopers Limited providing loan directly to the employees to the maximum of their 5 months' salary to enable them to buy fully paid shares in its holding company Security Troopers Ltd. is not valid.

Chapter 7 Management and Administration

Question 1 Sept'25 – 5 marks

Fabulous Fabricators and Mechanics Ltd. is a listed public limited 5 company incorporated in the year 2023 with the object to manufacture and engage in the construction of iron-ore based infrastructure for various industries on a contractual basis. The company is having a paid-up share capital of ₹ 200.30 Crore divided in 865 members holding rights to vote in meeting.

The Annual General Meeting of the company was due to be held on 12.12.2023 at the registered office of the company in Raipur, Chhattisgarh. The Board of directors decided to provide the facility of E-Voting to its members in addition to other modes despite of the disagreement shown by Ms. Riddhi one of the directors who was of the view that in case of the above company, it was not mandatory to provide the facility of E-Voting.

On the day of the meeting Mr. Mohan, one of the members who had opted for E-Voting, could not exercise his option hence was physically present at the meeting to vote. The Chairman of the meeting did not allow him to physically cast his vote on the pretext that he had opted for E- Voting and now he cannot change his option and thus had to vote through E-Voting despite of being present.

Further a matter regarding appointment of Mr. Keshav as a small shareholders director was also to be discussed in the meeting therein, to which the legal team suggested that the same can only be undertaken by voting through postal ballot and not otherwise.

Referring to the provisions of the Companies Act, 2013 elaborate:

(i) Whether the contention of Ms. Riddhi was correct as to the provision of E-Voting facility being optiona in case of Fabulous Fabricators and Mechanics Ltd.?

(ii) Can the Chairman stop Mr. Mohan to physically vote at the meeting?

(iii) Is the suggestion of the legal team regarding appointment of Mr. Keshav by voting through postal ballot valid at law?

Answer

(i) As per sub-rule (2) of Rule 20 of the Companies (Management and Administration) Rules, 2014, (w.e.f. 19.03.2015), every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

The conditions stated above are disjunctive, not cumulative.

Applying the above rule, since its shares are listed on stock exchange, Fabulous Fabricators and Mechanics Ltd. will have to mandatorily provide option of E-Voting to its members although it is having less than 1,000 members. Therefore, the contention of Ms. Riddhi was not correct.

(ii) As per sub-rule (4)(iii)(B) of Rule 20 of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state- that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting.

Also as per sub-rule (4)(xi), the Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, with the assistance of scrutinisers, by use of ballot or polling paper or by using an electronic voting system for all those members who are

present at the general meeting but have not cast their votes by availing the remote e-voting facility.

In the given question, since Mr. Mohan could not exercise his option of e-voting, he can physically vote at the meeting. Thus, as per the circumstances given in the question, the Chairman cannot deprive Mr. Mohan from physically voting at the meeting as he has not cast his vote by remote e-voting earlier.

(iii) As per section 110(1)(a) of the Companies Act, 2013, a company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot.

As per section 110(1)(b) a company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

Pursuant to Rule 22(16)(h) of the Companies (Management and Administration) Rules, 2014, election of a director under section 151 of the Act (i.e. appointment of a director elected by small shareholders) shall be transacted only by means of voting through a postal ballot.
As per section (65) of the Companies Act, 2013, "postal ballot" means voting by post or through any electronic mode.

Considering the above provisions, we can conclude that the suggestion of the legal team that appointment of Mr. Keshav as a small shareholders director can only be undertaken by voting through postal ballot is valid.

Question 2 Sept'25 – 5 marks

Arch-Support Ltd. is a public limited company incorporated in 2018 having its registered office in Nashik, Maharashtra and engaged in the manufacture of sports shoes and related accessories. It has the following breakup of equity and preference share-capital:

1,20,000 Equity Shares of ₹ 100 each;
1,50,000 10% Preference Shares of ₹ 10 each.

Ms. Martha, one of the elite members from Jaipur holds in her name equity shares worth ₹ 6,50,000 of the company as on date and also has beneficial interest in equity shares worth ₹ 3,00,000, is concerned about declaration to be made by her as mandated by the Companies (Significant Beneficial Owner) Amendment Rules, 2018(SBO Rules).

She consulted CA Ms. Marina, her friend on the above issue who advised that since she has significant beneficial ownership directly and indirectly in the company, she is required to file the declaration as mandated by the above rules.

Referring to the provisions of the Companies Act, 2013 and SBO Rules, decide on the following:
(i) Whether the advice given by CA Ms. Marina, her friend on the above issue is in line with SBO Rules?
(ii) SBO Rules are applicable in every case. Comment and mention the instances if any, where these rules are not applicable.

Answer

(i) As per section 90(1) of the Companies Act, 2013, every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and

other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

As per Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018, "Significant Beneficial Owner" means an individual, referred to in sub-section (1) of section 90 of the Act, who, acting alone or together, or through one or more persons or trust, satisfies one or more of the following:

- holds, indirectly, or together with any direct holdings, not less than 10% of the shares of the reporting company;
- holds, indirectly or together with any direct holdings, not less than 10% of the voting rights in the shares of the reporting company;
- has right to receive or participate in not less than 10% of the total distributable dividend or any other distribution payable in a financial year, through indirect holdings alone or together with any direct holdings;
- has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In the question given, Ms. Martha is holding equity shares amounting ₹ 6,50,000 in her name (directly) and amounting ₹ 3,00,000 (having beneficial interest). Thus, her total holding considering both direct and indirect holding of shares amounts to ₹ 9,50,000, which is less than the stipulated amount of 10% of (1,20,000 shares of ₹ 100 each) i.e. 10% of Rs 1,20,00,000, i.e. ₹ 12,00,000. Therefore, she is not required to file the declaration as mentioned by CA. Ms. Marina.

(ii) Rule 8 of the Companies (Significant Beneficial Owner) Amendment Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the share of the Reporting Company is held by:

(a) The Investor Education and Protection Fund Authority [constituted under section 125 (5)];

(b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;

(c) the Central Government, State Government or any local authority;

(d) (i) a reporting company or (ii) a body corporate or (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);

(e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and investment vehicles regulated by Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Chapter 9 Accounts of Company

Question 1 Sept'25 – 5 marks

Chicago Bricks Inc. is a company incorporated in Chicago, USA in the year 1985 engaged in the manufacture of cement and related products. On 10.04.2022, it commenced manufacture in India through its branch, engaged in the manufacture of fly-ash bricks used in construction of buildings and other infrastructural projects throughout the country. The operations of the branch have been growing in a fast pace.
The turnover of the branch as on 31.03.2025 since its commencement are:

Financial Year	Turnover
FY 2022-23	₹ 75 Crore
FY 2023-24	₹ 65 Crore
FY 2024-25	₹ 85 Crore

As per the data available, the branch works based on 20% net-profit margin.
The branch is opposing the above view and has submitted that although the CSR provisions are applicable in the present case but there was no requirement to constitute a CSR Committee and the above CSR functions can be discharged by the Board of Directors themselves.

Considering the provisions of the Companies Act,2013, whether Chicago Bricks Inc. is correct in the view as to non-applicability of formation of CSR Committee in this case?

Answer

As per the facts given in the question, we have to answer whether Chicago Bricks Inc. (advised through its Director Mr. Ramesh) is correct as to applicability of formation of the CSR Committee or as to non-applicability of formation of the CSR Committee (by the Indian branch) is correct. The question can be answered by analysing the provisions of section 135(1), 135(5) and 135(9) of the Companies Act, 2013 read with Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

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 consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

As per Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules.

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, atleast 2% 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.

According to section 135(9), where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate

Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

In terms of the above provisions of section 135(1) of the Companies Act, 2013 read with Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the provisions of section 135 will be applicable to the Indian Branch of Chicago Bricks Inc. since the branch has earned a net profit of ₹ 17 crore [20% of ₹ 85 crore] in the immediately preceding financial year (2024-2025), although its turnover was less than the stipulated ₹1,000 crore during the same period.

In terms of the above provisions of section 135(5), we can calculate the amount to be spent by the branch, which will be at least two per cent. of the average net profits of the company made during the three immediately preceding financial years.
2% of [(20% of ((75+65 + 85)/3)] = ₹ 15 crore] i.e. ₹ 30 lakh.

In terms of the above provisions of section 135(9), since the amount to be spent by the Indian Branch of Chicago Bricks Inc. under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of the Indian Branch (company).

Therefore, the view of Chicago Bricks Inc. is not correct as to applicability of formation of the CSR Committee in this case and the functions of such Committee be discharged by the Board of Directors of the Indian Branch (company).

Chapter 10 Audit and Auditors

Question 1 Sept'25 – 5 marks

Sharp Surgical Ltd. is a public limited company engaged in the 5 manufacture of surgical instruments with a nation-wide chain of dealers and retailers to facilitate the trade. It was incorporated in the year 2020. It has a paid-up capital of ₹ 350.10 Crore with free reserves worth ₹ 156.70 Crore with a secured business Term loan of ₹ 56 Crore from GHL Bank Pvt. Ltd. as at 31.03.2025. Lamp bell & Associates Chartered Accountants were appointed to conduct Statutory Audit for F.Y. 2024-25 of the aforesaid company. During the audit of accounts Mr. Lamp bell the senior partner of the auditing firm shared the following observations with Mr. Sharp one of the promoter directors of the aforesaid company:

No.	Observation
1.	Out of the above term loan, ₹ 3.15 Crore were suspected to be used for purposes other than business, in providing unsecured loan to private individuals in the company.
2.	Mr. Reet one of the officers in the company was suspected to have siphoned an amount of ₹ 0.15 Crore.

Mr. Lamp bell having reasons to believe for the above frauds, within 2 days of such detection, informed the Audit Committee and asked it for its reply so that the central government can be informed of the suspected fraud of ₹ 3.15 Crore. Further he emphasized to mention the case of suspected siphoning of ₹ 0.15 Crore to the audit committee. Mr. Sharp requested the auditors not to report any matter to the central government, rather they can mention both above matters in the Director's Report to be prepared under section 134(3) of the Companies Act, 2013.

The above request of Mr. Sharp was based on the reasoning that it was only a case of suspected fraud and the same is a matter of investigation on part of the company.

Considering the applicable provisions under the Companies Act, 2013, decide upon the following:

(i) Whether Lamp bell & Associates Chartered Accountants should restrict the reporting of the above suspected fraud of ₹ 3.15 Crore as requested by Mr. Sharp? What is the correct procedure to be followed by the auditor in such cases?

(ii) What would be the correct procedure for the suspected siphoning of ₹ 0.15 Crore by the auditor of the company?

Answer:

(i) As per section 143(12) of the Companies Act, 2013, read with Rule 13(1) of the Companies (Audit and Auditors) Rules, 2014, if an auditor in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving or is expected to involve individually an amount of ₹ 1 crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government within the stipulated time.

In the given question, since the amount involved in fraud is more than rupees one crore hence, Lamp bell & Associates Chartered Accountants should not restrict the reporting of the suspected fraud as requested by Mr. Sharp. The auditor must inform the same to the Central Government and should follow the following procedure.

(a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;

(b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;

(c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

(d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same. The report shall be filed electronically in form ADT-4.

(ii) As per the proviso to section 143(12) of the Companies Act, 2013, read with Rule 13(1) of the Companies (Audit and Auditors) Rules, 2014, in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases not later than 2 days from the date of his knowledge of the fraud.

The companies, whose auditors have reported frauds under this sub- section to the audit committee or the Board but not reported to the Central Government, shall disclose the following details about such frauds in the Board's report:

(a) Nature of Fraud with description;

(b) Approximate Amount involved;

(c) Parties involved, if remedial action not taken; and

(d) Remedial actions taken.

Under Rule 13(4), the company must disclose in the Board's Report all such frauds reported during the year.

Question 2 MTP 2 Jan'26 – 5 marks

Mr. Ram is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2025 while the financial year of the company ends on 31st March, 2026. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

Answer

Casual vacancy: According to section 139(8) of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General (CAG) of India, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Chapter 14 FEMA

Question 1 Sept'25 – 4 marks

Heavy Loaders Ltd. is a public limited company incorporated in India and engaged in the manufacture of loader vehicles used for commercial construction purposes. It is planning to expand its business outside India and hence has come in contact with Mr. Fred, an American citizen working as an agent of companies planning to secure business in USA. Mr. Fred has informed the directors of Heavy Loaders Ltd. that another Indian company engaged in the commercial construction business has a requirement of 25 loader vehicles for its wholly owned American subsidiary company.

Heavy Loaders Ltd. supplied the required loader vehicles with an invoice value of USD 350,000 in exchange of allotment of equity capital of the same worth in the American company. Mr. Fred has asked for an export agent commission of 15% of the invoice value of goods supplied from Heavy Loaders Ltd. to which Heavy Loaders Ltd. has refused the payment on grounds that maximum commission that can be paid can be 10% of the invoice value of goods supplied.

Considering the provisions of the Foreign Exchange Management Act, 1999 decide:

(i) Whether the above transaction of supplying machines in exchange of equity investments can be treated as "export" keeping in mind the absence of monetary factor in the transaction?

(ii) Whether the rate of export agent commission demanded by Mr. Fred be paid or confined to only 10% of the invoice value of goods supplied.

Answer

(i) According to section 2(l) of the Foreign Exchange Management Act, 1999, 'Export', with its grammatical variations and cognate expressions means:

(1) the taking out of India to a place outside India any goods.

(2) provision of services from India to any person outside India.

In the given question, Heavy Loaders Ltd., an Indian company, supplied loader vehicles with an invoice value of USD 350,000 in consideration for the allotment of equity shares in an American Company, which is a wholly owned subsidiary of an Indian Company.

Since, the transaction involves 'the taking out of India to a place outside India the loader vehicles', the transaction will be treated as 'export'.

(ii) As per Schedule I of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawl of foreign exchange is prohibited for Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies.

Hence, the payment of any commission by Heavy Loaders Ltd. to Mr. Fred is prohibited in the given situation.

Question 2 Sept'25 – 4 marks

Enumerate the circumstances and the forms of business as mentioned in 4 the Foreign Exchange Management Act, 1999 in which a person resident outside India is absolutely prohibited from making any investments in India.

Answer

As per the Foreign Exchange Management (Permissible Capital Account Transactions) Rules, 2000, a person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

(i) In the business of chit fund; Registrar of Chits or an officer authorised by the State Government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians. Non- resident Indians shall be eligible to subscribe,

through banking channel and on non- repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time.

(ii) As Nidhi company;

(iii) In agricultural or plantation activities;

(iv) In real estate business, or construction of farm houses, or
Explanation: In "real estate business" the term shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

(v) In trading in Transferable Development Rights (TDRs).
'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

Chapter 15 Limited Liability Partnership Act, 2008

Question 1 Sept'25 – 5 marks

Harish, Priyam and Priyesh are three advertising professionals 5 specialized in the field of creating short advertisement films for various Fast Moving Consumer Goods (FMCG) companies. They have been engaged in their businesses separately as sole-proprietors, but have now decided to join hands and form a Limited Liability Partnership. On 10.04.2024, the e-Form RUNLLP is filed thereby to reserve the name of the LLP as HPP & Associates LLP which has been approved by the Registrar along with e-Form. The e-form FiLLiP has also been filed containing details of partners and their consent.

Meanwhile even after incorporation as HPP & Associates LLP on 30.04.2024 the LLP could not finalize the LLP agreement as Harish and Priyam have agreed to contribute ₹ 1.15 Crore to the LLP whereas Priyesh has desired and insisted to monetize his future services for one year to the LLP as his capital contribution, which has been opposed by the other two partners as beyond law. However, a consensus was drawn between the above three and a common consensus LLP agreement was submitted on 20.05.2024.
The LLP has further planned to induct Srijan Cooperative Society as one of its partners.

Considering the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Whether the Registrar would accept the LLP agreement so submitted after 20 days of incorporation as in compliance with law?

(ii) Whether the opposition of the desire of Priyesh on matter and form of his capital contribution, correct?

(iii) Whether Srijan Cooperative Society can be inducted as a partner in the LLP?

Answer

(i) As per section 23 of the Limited Liability Partnership Act (LLP), 2008, the LLP agreement shall be in writing and filed with the Registrar in such form and manner as may be prescribed.

As per Rule 21 of the LLP Rules, 2009, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days of the date of incorporation. Proviso to the above rule also specifies that changes, if any, made therein shall be filed with the Registrar within thirty days of such change.
In terms of the above provisions, the Registrar will accept the LLP agreement which has been submitted after 20 days of incorporation in compliance with law.

(ii) According to section 32(1) of the Limited Liability Partnership Act, 2008, a contribution of a partner of the LLP may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Thus, Priyesh's plea for contributing his future services for one year to the LLP as his capital contribution is tenable and therefore the other partners are not correct in opposing to Mr. Priyesh for the same.

(iii) According to section 5 of the Limited Liability Partnership Act, 2008, any individual or body corporate may be a partner in a LLP.

The definition of body corporate as given under the LLP Act, 2008, does not include a co-operative society registered under any law for the time being in force. Hence, Srijan Cooperative Society cannot be inducted as a partner in LLP.