

# 7

## CHAPTER

# Management and Administration

### LDR Questions



Q. 11

Q. 13

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Q. 17

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### ICAI Module Descriptive Questions

#### Section 88 Register of Members

1. As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?

#### Solution:

In this respect Rules 5 (7) and 5 (8) of the Companies (Management and Administration) Rules, 2014 are relevant.

Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

#### Section 90 Significant Beneficial Owners

2. There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.

#### Solution:

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

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

### Section 92 Annual Return

3. The paid-up share capital of Disha Home Appliances Limited is ₹8 crore divided into 80 lakh shares of ₹10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.

#### Solution:

In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

- (i) a listed company; or
- (ii) a company having paid-up share capital of ₹10 crore or more or turnover of ₹50 crore or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to ₹10 crore or more or its turnover becomes ₹50 crore or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

### Section 92

4. Super Mart Limited called its AGM in order to lay down the financial statements for the approval of the shareholders. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

#### Solution:

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 (5) of the Act.

## Section 92

**5. Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.**

- (i) Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.
- (ii) Whether Mr. Rich, a director holding only 400 shares of worth ₹4000, has the right to inspect the Register of Members?

### Solution:

- (i) Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

## Section 96 Annual General Meeting

**6. Infotech Ltd. was incorporated on 1.4.2022. No General Meeting of the company has been held till 30.4.2024. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.**

### **Solution:**

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

The first financial year of Infotech Ltd is for the period 1st April 2022 to 31st March 2023, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2023.

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

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2023. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

### **Section 101 Notice of Meeting**

7. With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ₹30 crore divided into 3 crore shares of ₹10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.

### **Solution:**

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto:

- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
  - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
  - (b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at that meeting.

Second proviso to Section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

## Section 101

8. Madurai Bakes Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2024. The notice was posted to the members on 16th August, 2024. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:
- (i) Whether the meeting has been validly called?
  - (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
  - (iii) Can the delay in giving notice be condoned?

### Solution:

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected- in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting).  
Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

## Section 102 Explanatory statement

9. M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

### Solution:

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any 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:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and

- (b) 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 member is valid since the complete details about the issue of sweat equity were required to be sent with the notice of meeting. The notice is, therefore, cannot be said to be a valid one when the provisions of Section 102 of the Companies Act, 2013 are considered.

## Section 102

- 10.** Zorab Garments 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. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

### Solution:

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any general meeting other than an AGM, 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:—

- (a) 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);
- (b) 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.

## Section 103 Quorum for meetings

- 11.** The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:



- (i) A is the representative of Governor of Uttar Pradesh.
- (ii) B and C are preference shareholders,
- (iii) D is representing Y Ltd. and Z Ltd.
- (iv) E, F, G and H are proxies of shareholders.

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

### Solution:

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

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

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

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

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

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

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.

D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but proxies representing the members.

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

### Section 103

#### 12. Examine the validity of the following situation with reference to the relevant provisions of the Companies Act, 2013:

The Board of Directors of Shreya Transporters and Logistics Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

#### **Solution:**

According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

### Section 103

#### 13. KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2024 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.



1. P1, P2 & P3 shareholders
2. P4 representing ABC Ltd.
3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders

- (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
- (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
- (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

What happens if there is no Quorum at the adjourned meeting?

**Solution:**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

(i)

1. P1, P2 and P3 will be counted as three members.
2. If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
3. Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted as constituting quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Cables Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the requirement of quorum and he reaches after 11:30 A.M. (i.e. after half an hour from the starting time of the meeting), the meeting will be adjourned as provided above.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103 of the Companies Act, 2013.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

**Section 105 Proxies**

**14.** A General Meeting was scheduled to be held on Friday, 15th April, 2024 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting.



Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 09-04-2024 was deposited by Mr. Y with the company at its registered Office on 11-04-2024. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

**Solution:**

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf in his absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company.

Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.

However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

## Section 105

- 15.** Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position in respect of demand for inspection of proxies by Surya as per the provisions of the Companies Act, 2013

**Solution:**

Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

## Section 105

**16. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.**

### **Solution:**

A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf in his absence. The term also applies to the person so appointed and in such case a proxy is a person appointed by a member of a company, to attend the general meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy are contained in section 105 of the Companies Act, 2013. They are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

## Section 109 Demand for Poll

**17. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.**



- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th 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.
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

### **Solution:**

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, section 109 (1) lays down as under:

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:-

- (a) In the case of 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


- (b) 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.

Withdrawal of the demand for poll: According to section 109 (2), the demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to the provisions contained in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawal of the demand for poll.

## Section 118 Minutes

 **18.** Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2024. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2024, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

### Solution:

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration ) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose. Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

## Section 118

**19.** Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.

### Solution:

Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that in case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

- (i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.
- (ii) there should be entered the result of the voting made by the shareholders in respect of resolution.
- (iii) there should be entered the summary of the scrutinizer's report.
- (iv) there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

## Section 118

**20.** In a General meeting of Alpha Software Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

### Solution:

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) of section 118.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

## Section 121 Report on AGM

**21.** Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.



- (i) State within how much time it is required to file the said Report.
- (ii) In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure.

### Solution:

- (i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto- parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.
- (ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General

Meeting within the specified time limit, shall be liable to the following penalty:

- ✦ **Company:** ₹one lakh and in case of continuing failure, with a further penalty of ₹five hundred for each day after the first during which such failure continues subject to a maximum of ₹five lakh.
- ✦ Every officer who is in default: Minimum ₹twenty-five thousand and in case of continuing failure, with a further penalty of ₹five hundred for each day after the first during which such failure continues subject to a maximum of ₹one lakh.

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to ₹five lakh in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be ₹one lakh in case of continuing failure.

## RTP, MTP and PYQ Descriptive Questions

### Section 88 Foreign Register

- 22.** The paid-up share capital of Golden Shoes Limited is ₹25,00,000 divided into 2,50,000 equity shares of ₹10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office. **(RTP Nov 23)**

#### **Solution:**

**Law:** Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

**Conclusion:** Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

### Section 92 Annual Return

- 23.** Explain the following as per the provisions of the Companies Act, 2013:
- (i) Abridged Form of Annual Return
  - (ii) Signing of Annual Return (5 Marks) (MTP April 24)

#### **Solution:**

- (i) Abridged Form of Annual Return

In terms of Second Proviso to Section 91(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1) One Person Company and small company shall file the annual return in Form No. MGT-7A.

(ii) Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

## Section 92

**24.** ABC Pvt. Ltd. is a One Person Company (OPC) incorporated in 2024. The company has not appointed a company secretary due to its small scale of operations. At the end of the financial year 2024-25, the company needs to file its annual return. The director in state of dilemma, consulted the company law expert whether they need to submit a full-fledged annual return or an abridged version and who should sign the document.

Based on the provisions of the Companies Act, 2013, advise on the following:

(i) What form should ABC Pvt. Ltd. use to file its annual return?

(ii) Who is authorized to sign the annual return?

(RTP May 25)

### Solution:

**Law:** Law same like above question

**Conclusion :** Accordingly, following are the advise given by the expert:

(i) As per Section 92 and Rule 11(1), since ABC Pvt. Ltd. is a One Person Company (OPC), it should file its annual return in Form MGT-7A (abridged form) for the financial year 2024-25.

(ii) In the absence of a company secretary, the annual return should be signed by the sole director of the company as per the provisions applicable to One Person Companies

## Section 92

**25.** Enumerate the provisions of the Companies Act, 2013 in respect to the following:

1. Time limit for filing of annual return when Annual General Meeting is held.
2. Time limit for filing of annual return when Annual General Meeting is not held.

(5 Marks) (MTP Sep 24)

### Solution:

Time limit for Filing of Annual Return

(i) A copy of annual return shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the Annual General Meeting ('AGM') is held.

(ii) Where no annual general meeting is held in any year, it shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

## Section 92

**26.** Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct.


(NOV 2018)

### Solution:

**Law :** As per the provisions of Section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed

**Conclusion :** In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct.

## Section 92

-  **27.** Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? **(MAY 2018) (MTP NOV 2020) (Nov 23)**

### Solution:

**Law :** According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, within the time specified under section 403.

Sub-section (5) of Section 92 also states that if a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

**Conclusion:** In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.

In the above case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

## Section 92

- 28.** As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. **(MAY 2018)**

### **Solution:**

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed

### **Section 94 Maintenance and Inspection of Register of members**

**29. M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.**

- (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
- (ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? **(MAY 2018)**


### **Solution:**

Maintenance of the Register of Members etc.:

- (i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:  
Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.  
So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.
- (ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

### Section 96 AGM

 **30.** Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Hintal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Hintal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ. **(RTP NOV 2019)**

#### **Solution:**

**Law :** As per sec 96 of companies act,2013, AGM shall be held at the:

- (i) Registered office of the company; or
- (ii) Some other place within the city, town or village in which the registered office is situated.

However, AGM of an unlisted company may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members.

**Conclusion:** In present case,

- (i) Opposition of members of Rijwan ltd of taking AGM at hintal plaza is not tenable as AGM of listed company can be held not only in registered office of company but some other place within the city, town or village in which the registered office is situated. And therefore, can be held in hintal plaza in Rajasthan.
- (ii) If Rijwan ltd is unlisted company, it can hold AGM anywhere in India including Jaipur as AGM of an unlisted company may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members

### Section 96

**31.** Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant.

Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. **(5 Marks)(MTP M 21)**

#### **Solution:**

**Law:** According to Section 96 of the Companies Act, 2013,

- (i) every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.
- (ii) Registrar does not have the power to grant extension to time limit for the first AGM of the company.

**Conclusion:** In Present case, The first financial year of Shambhu Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company

## Section 96

32. Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM. It is also provided that by 1st July, 2024, the company had obtained written consent from all members via email, agreeing to hold the AGM at this out-of-state location. As per the Companies Act, 2013, evaluate whether the AGM was validly conducted.

(RTP Jan 25)

### Solution:

**Law:** According to Section 96 of the Companies Act, 2013,

- (i) every annual general meeting shall be called during business hours, that is, between 9 AM and 6 PM on any day that is not a National Holiday
- (ii) It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

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

**Conclusion:** In the given question, Pran Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (by 1st July, 2024). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

## Section 96

33. Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:

- (i) The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 have given their consent in writing for conducting the meeting in Lonavala.

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.

(5 Marks) (MTP Jan 25)

### Solution:

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

However, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, ‘National Holiday’ means and includes a day declared as National Holiday by the Central Government.

**Conclusion:** In the instant case

- (i) Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.
- (ii) Kedar Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 98 members out of 100 have given their consent for conducting the meeting in Lonavala.

## Section 96

- 34.** Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of a company. Also, state the power of the Registrar to grant extension of time for the First Annual General Meeting. Explain with the help of an example.

**(5 Marks) (MTP Mar. 24)**

### **Solution:**

First Annual general meeting

- (i) According to section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.
- (ii) No extension of time can be granted by the Registrar for the holding of the first annual general meeting.
- (iii) Example: ABC Limited was incorporated on 1.4.2021. No General Meeting of the company was held till 30.4.2023. The first financial year of ABC Ltd is for the period 1st April 2021 to 31st March 2022, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2022.

## Section 96

- 35.** Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
- (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

**(Mar. 22)(4 Marks)**

### **Solution:**

- (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the Company should be held within nine months from the closing of the first financial year. Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is Incorrect.
- (ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

## Section 100 EGM

- 36.** 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 requisitionist 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) (MTP Jan 25)**

### Solution:

#### Law:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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].
- (v) 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.
- (vi) 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.

**Conclusion:** 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.

### Section 100

- 37. The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting. (3 Marks) (MTP Oct. 23)**

#### Solution:

#### Law:

- (i) 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.
- (ii) 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.
- (iii) No explanatory statement need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists need not disclose the reasons for the resolution(s) which they propose to move at the meeting. (Rule 17)

**Conclusion:** Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement i.e reason for holding meeting for the resolution proposed to be passed at the meeting.

### Section 100

**38.** Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:



- (i) EGM be held in India
- (ii) EGM be held in Netherlands

(RTP MAY 2019)

#### **Solution:**

**Law :** According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at any place within India.

**Conclusion:** In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

### Section 101 Notice of Meeting

**39.** Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013. (5 Marks) (MTP Sep 24)

#### **Solution:**

Persons entitled to receive the Notice of the General Meeting

According to section 101(3) of the Companies Act, 2013, the notice of every meeting of the company shall be given to:

- (1) every member of the company, legal representative of any deceased member or the assignee of insolvent member;
- (2) the auditor or auditors of the company;
- (3) every director of the company.

### Section 101

**40.** Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide, as per the provisions of the Companies Act, 2013:

- (i) Whether the contention of Amar is valid.
- (ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held? (April 22)(5 Marks)

### **Solution:**

**Law:** According to section 20(2) read with sec 101 of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting

**Conclusion:** Accordingly, the questions as asked may be answered as under:

- (i) The contention of Amar shall be tenable, for the reason that the notice was not properly served. However, company may claim accidental omission to preserve notice from making invalid
- (ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

### **Section 101**

**41.** P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email.

In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan. **(4 Marks) (MTP M 21)**

### **Solution:**

**Law:** As per Rule 18 of the Companies (Management & Administration) Rules, 2014, read with sec 101 of companies Act, 2013, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

**Conclusion:** Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

### **Section 102 Business and Explanatory Statement**

**42.** Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company.

**(MTP MAY 2017)**

### **Solution:**

Ordinary Business [Sec. 102]

At a AGM Following business shall be ordinary business:

- (i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.
- (ii) Declaration of Dividend.
- (iii) Appointment & Removal of directors
- (iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.

## Section 102

43. Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:



- (i) Resolution to increase the authorised share capital of the company.
- (ii) Appointment and fixation of the remuneration of Mr. Pramod as the statutory auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

(RTP Sep 24) (5 Marks) (MTP Sep 24)

### Solution:

#### Law:

1. At a AGM Following business shall be ordinary business:
  - (i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.
  - (ii) Declaration of Dividend.
  - (iii) Appointment & Removal of directors
  - (iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.
2. At EGM - No business is ordinary.
3. Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.
4. Following are contents of explanatory statement
  - (a) All material facts concerning each item of business to enable members to take decisions.
  - (b) The nature of concern or interest (financial or non-financial) of:
    - (i) Every director and manager;
    - (ii) Every other key managerial person;
    - (iii) Relatives of (i) and (ii) above.
  - (c) If any item of the special business affects any other company, then the extent of shareholding of every director and manager in that company in case their shareholding interest is atleast 2% of the paid-up share capital of the other company [Proviso to Sec. 102(2)]
  - (d) If special business refers to any document which is to be considered at the GM, the time and place where such document can be inspected shall be specified in the Explanatory Statement. [Sec. 102(3)]
5. Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

**Conclusion:** In present case,

- (i) Part (i) of the question relating to increase in the Authorized Capital falls under special business and The information about the amount is a material fact with reference to the proposed increase of authorized share capital, hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

- (ii) Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.
- (iii) The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013

### Section 103 Quorum

**KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2024 at 11:00**

**44. A.M. The company has 900 members. On 11th March, 2024 following persons were present by 11:30 A.M.**

- (1) P1, P2 & P3 shareholders
- (2) P4 representing ABC Ltd.
- (3) P5 representing DEF Ltd.
- (4) P6 & P7 as proxies of the shareholders
  - (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
  - (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
  - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
  - (iv) What happens if there is no Quorum in the Adjourned meeting?

**(5 Marks) (MTP Sep 24)**

### Solution:

#### Law:

- (i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if the number of members is not more than 1000
- (ii) The following shall be counted as quorum:
  - 1. Members personally present.
  - 2. Representative of:
    - (a) President
    - (b) Governor of States
    - (c) Body corporate
  - 3. Person in more than one capacity is counted as such for quorum. One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one member for the purpose of quorum.
  - 4. Joint members are considered as one member for counting as quorum.
- (iii) The following shall not be counted as quorum:
  - 1. Proxy is not counted as quorum.
  - 2. Preference shareholders are not counted for quorum except for business which affects their rights.

**Conclusion:**

- (i)
  - (1) P1, P2 and P3 will be counted as three members.
  - (2) P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
  - (3) P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors. Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.
- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103. In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.
- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum

**Section 103**

**45.** The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

- (i) A, the representative of Governor of Karnataka.
- (ii) B and C, shareholders of preference shares,
- (iii) D, representing Green Limited and Blue Limited
- (iv) E, F, G and H as proxies of shareholders.

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

**(6 Marks) (MTP Sep. 22)**

**Solution:**

**Law:** Same like above

**Conclusion:** Calculation of Quorum u/s 103

Particulars Counting u/s 103

- |  |       |
|--|-------|
| (i) A, the representative of Governor of Karnataka   | (a) 1 |
| (ii) B and C, shareholders of preference shares,     | 0     |
| (iii) D, representing Green Limited and Blue Limited | 2     |
| (iv) E, F, G and H as proxies of shareholders.       | 0     |

In view of the above there are only three members personally present however quorum required is 7.

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

## Section 103

46. The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting. **(5 Marks) (MTP sep 24)**

### Solution:

**Law:** As per section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled

**Conclusion:** Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

## Section 103

47. Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:
- Quorum for the general meeting if the company has 800 members.
  - Quorum for the general meeting if the company has 6500 members.
  - Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50. **(April 22) (5 Marks)**

### Solution:

**Law:** According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- five members personally present if the number of members as on the date of meeting is not more than one thousand,
- fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

**Conclusion:** Thus,

- If the company has 800 members, quorum shall be 5 members personally present.
- If the company has 6500 members, quorum shall be 30 members personally present.
- If the company has 5500 members, quorum shall be 30 members personally present. However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

## Section 103

48. The Annual General Meeting of KMP Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision. **(MAY 2015)**

### Solution:

#### Law:

- (i) Section 103 of the Companies Act, 2013 provides that fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (ii) CONSEQUENCES OF NO QUORUM: If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company –
  - (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or
  - (b) to such other date and such other time and place as the Board may determine; or
  - (c) the meeting, if called by requisitions (under section 100), shall stand cancelled.

**Conclusion:** In the instant case, KMP Limited is a public company with total number of 2750 members, hence atleast 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting.

Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, if the quorum is not present within half –an-hour from the time appointed for holding a meeting of the company. Further, the Board of Directors may decide for such other date and such other time and place, which they may deem fit. Section 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman obviating to take a decision on the matter of the meeting. The question of validity of Chairman’s decision does not arise.

### Section 103

**49.** PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a Private company?

(2 + 2 = 4 Marks) (Nov 2020)

### Solution:

#### Law:

- (i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.
- (ii) If the specified quorum is not present within half an hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and place as the Board may determine.
- (iii) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

**Conclusion:** In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of section 103(1)(b), in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

### Section 105 Proxy

**50.** A General Meeting of ABC Private Ltd was scheduled to be held on 15th April, 2024 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that the company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2024 was deposited by Mr. Y with the company at its registered office on 11-04-2024. Similarly, another member, Mr. W, also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

**(5 Marks) (MTP Jan 25) (RTP MAY 2021) (MTP MAY 2019)**

#### Solution:

**Law:** A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of section 105 of the Companies Act, 2013,

- (i) every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy.
- (ii) Section 105(4) provides that a proxy received 48 hours before the meeting will be valid.
- (iii) If more than one proxy is appointed by the same member, the proxy received later in time shall be considered provided it has been duly received by the company 48 hours before the meeting.

**Conclusion:** Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

### Section 106 Voting

**51.** Mr. John held certain partly paid-up shares of Ltd. company. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote

if he has not paid the calls on the shares held by him. John contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of John is valid. (RTP May 2015) (MTP NOV 2017)

**Solution:**

**Law:** Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

**Conclusion:** In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. John's contention is not valid.

### Section 106

52. 'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members. (NOV 2018)

**Solution:**

**Law:** According to the Section 106 of companies act, 2013:

1. Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
2. A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

**Conclusion:** In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

### Section 108 E-Voting

53. Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e- voting period and the time of closing of remote e-voting. (RTP Nov. 22)

**Solution:**

**Law:** Sec 108 read with Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has listed its equity shares on a recognised stock exchange and 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.

2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

**Conclusion:** In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

### Section 108

54. If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? (MAY 2019)

#### Solution:

**Law:** According to sec 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

**Conclusion:** In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

### Section 109 Poll

55. 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 1/10th 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) (MTP Jan 25)

#### Solution:

**Law:** 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

**Conclusion:** In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.

## Section 109

**56.** 'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013. (RTP Nov. 22)

### **Solution:**

**Law:** According to sec 109 read with Rule 21 of the Companies (Management and Administration) Rules, 2014

- (i) The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register
- (ii) The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

**Conclusion:** Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

## Section 111 Members Resolution

**57.** Prakash and some of his friends are members of Focus Limited, a company with a paid- up share capital of rupee one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

- (i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.
- (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution. (RTP May24)

### **Solution:**

#### **Law:**

In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under: "In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting."

#### **Conclusion:**

- (i) Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. ₹10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.
- (ii) The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:
  - (a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.

- (b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.
- (c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.
- (d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.
- (e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

### Section 114 Ordinary and Special Resolution

**58.** At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration. (MTP NOV 2019)

#### Solution:

#### Law:

- (i) As per Section 114(2) of the Act, a resolution shall be a special resolution, when-
  - (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
  - (b) The notice required under this Act has been duly given; and
  - (c) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting
- (ii) Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution.
- (iii) Abstentions or invalid votes, if any, are not to be taken into account.

**Conclusion:** Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order

### Section 114

**59.** Give the points of distinction between ordinary resolution and special resolution. (MAY 2019)

#### Solution:

- (i) Meaning - Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it. Whereas As per Section 114(2) of the Act, a resolution shall be a special resolution, when-
  - (d) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

- (e) The notice required under this Act has been duly given; and
- (f) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting
- (ii) Matter – Special resolution are required on more critical matters as compared to matters requiring ordinary resolution
- (iii) Filing with ROC- Copy of every special resolution is filed with ROC within 30 days in MGT-14 whereas only in some cases required by law , ordinary resolution need to be file with ROC

### Section 115 Special Notice

- 60.** Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request. **(NOV 2018)**



#### Solution:

**Law:** Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding ₹5,00,000/- has been paid-up.

**Conclusion:** According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

### Section 118 Minutes

- 61.** Enumerate the provisions of the Companies Act, 2013 in respect to the following:
- (i) Matters not to be included in the minute, as per the opinion of the Chairman.
  - (ii) Maximum time allowed for entering minutes of proceedings. **(5 Marks) (MTP April 24)**

#### Solution:

As per sec 118 of companies Act,2013

- (i) What to include or exclude in minutes is solely at discretion of Chairman . There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting—
  - (a) is or could reasonably be regarded as defamatory of any person; or
  - (b) is irrelevant or immaterial to the proceedings; or
  - (c) is detrimental to the interests of the company.
- (ii) Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

### Section 121 Report on AGM

- 62.** Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

**(RTP MAY 2021)**

**Solution:**

- (i) Every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder.
- (ii) A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee.

**Conclusion:** Since, Pristine Ltd. is a listed company, hence it has to file a copy of report of AGM with the Registrar within 30 days from 31st August, 2020.

