

10

CHAPTER

Audit and Auditors

LDR Questions



Q. 7

Q. 10

Q. 12

Q. 15

Q. 18

Q. 21

Q. 27

Q. 28

Q. 33

ICAI Module Descriptive Questions

Section 139 Appointment of Auditors

1. State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:
 - (i) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.
 - (ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

Solution:

Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

- (a) Inform the members of the Company;
 - (b) Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
 - (c) Members shall at that extra ordinary meeting appoint the first auditors of the company;
 - (d) The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.
- (ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Section 139

2. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2024 by an ordinary resolution. Mr. Sanjay, a shareholder of the company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

Solution:

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Section 139

3. Explain how the auditor will be appointed in the following cases:
- A Government company within the meaning of section 394 of the Companies Act, 2013.
 - A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Solution:

- The appointment and re-appointment of auditor of a Government Company or a government-controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

- (ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

1. The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
2. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Section 141 Disqualification of Auditor

4. EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2023. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹1 lakh of EF Limited on 15 October 2023. But Naresh & Company continues to function as statutory auditors of the company. Advice.

Solution:

According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹1 lakh, which is within the specified limit. Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the company even after 15 October 2023 i.e. after the investment made by his wife in the equity shares of EF Limited.

Section 141

5. Examine the following situations in the light of the Companies Act, 2013:

“Mr. Abhi”, a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of ₹1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

Solution:

As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Abhi is holding security of ₹1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

Section 141

6. Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

- (i) “Mr. Prakash” is a practicing Chartered Accountant and “Mr. Aakash”, who is a relative of “Mr. Prakash” is holding securities of “ABC Ltd.” having face value of ₹70,000/- (market value ₹1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company.
- (ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
- (iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company

Solution:

- (i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹1,00,000. In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹70,000 (market value ₹1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.
- (ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lakh. In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 Lakh.
- (iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person who's relative is a director or is in the employment of the company as a director or key managerial personnel. In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Section 144 Auditor not to Render Certain Services

7. The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Solution:

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

RTP, MTP and PYQ Descriptive Questions

Section 139 Appointment of Auditors

8. PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)? **(MAY 2018)**

Solution:

As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

- (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (b) the proposed appointment is as per the term provided under the Act;
- (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Conclusion: Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Section 139

9. Mr. Ramchandra is a partner and in-charge (and certifies financial statements) of A & Associates. The firm is appointed as an auditor firm of Badri Limited (listed company). Mr. Ramchandra retires from A & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/24. In the general meeting of Badri Limited held on 15/06/24, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Badri Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company? **(MTP Jan 25)**

Solution:

Law: According to section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed i.e All companies (excluding one person companies & small companies), which are

- (a) Unlisted public companies and having paid up share capital of rupees ten crore or more;
- (b) Private limited companies and having paid up share capital of rupees fifty crore or more;
- (c) Having public borrowings from financial institutions, banks or public deposits of rupees fifty crore or more.

Shall appoint or re-appoint:

- (i) an individual as auditor for more than one term of five consecutive years; and
- (ii) an audit firm as auditor for more than two terms of five consecutive years.

Provided that:

- (i) an individual auditor or audit firm who has completed his term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.
- (iii) As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed during cooling period of five years.

Conclusion:

Here, Mr. Ramchandra has retired from A & Associates and joined Gupta & Gupta Firm. Mr. Ramchandra was a partner, in-charge Associates (and certifies the financial statement of the company) in A & Associates. He retires from A & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Badri Limited (listed company) for a period of 5 years.

Section 139

10. M/s Sharma & Associates is an audit firm with two partners, Mr. Sharma and Mr. Raj. Mr. Raj is also a partner in another audit firm, M/s Mehta & Associates. M/s Sharma & Associates was appointed as the statutory auditor for Bright Future Ltd. (listed company, on which provisions related to rotation of auditor apply) for two consecutive terms of 5 years each, from 2017 to 2027.



If Bright Future Ltd. now wants to appoint M/s Mehta & Associates as its audit firm, can it do so? If not, when will the restriction be lifted? **(RTP May 25)**

Solution:

Law: Law similar to question above.

Conclusion: Bright Future Ltd. cannot appoint M/s Mehta & Associates as its auditor immediately after the completion of M/s Sharma & Associates' tenure.

Since Mr. Raj is a common partner in both firms, regulatory provisions impose a cooling-off period of 5 years before either of these firms can be reappointed.

Therefore, Bright Future Ltd. can appoint M/s Mehta & Associates or M/s Sharma & Associates only after the cooling-off period ends in the year 2032.

Section 139

11. Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014. **(RTP NOV 2018) (NOV 2018)(MTP Sept 24)**

CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013:

- (i) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?
- (ii) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
- (iii) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
- (iv) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?


Solution:

Law: Law similar to Q no 2

Conclusion:

- (i) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- (ii) The cooling- off period shall be of 5 years.
- (iii) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company. However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.
- (iv) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company. Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

Section 139

-  **12.** Sohan Lal was appointed as the statutory auditor of RST Ltd., a non- government company at the Annual General Meeting held on 30th September, 2023. He has resigned after two months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a multinational company. Explain how the new auditor will be appointed by RST Ltd. and the conditions to be complied with in this regard. (PYQ Jan 2025)

Solution:

Law:

Filling Up Casual Vacancy [Section 139(8)]

Any vacancy arising in the office of the auditor due to any reason except on the expiry of his term is known as a casual vacancy.

As per section 139(8) of the Companies Act, 2013 (the Act), the Board of Directors (other than a Government Company) has power to fill casual vacancy in the office of the auditor within 30 days.

In case of casual vacancy due to the resignation of the auditor, such appointment shall be approved by the company by passing an ordinary resolution at a General Meeting convened within three months of the recommendation of the Board.

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

Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the Audit Committee, (if any). [Section 139(11)].

Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in Section 141 of the Act. The Company shall inform the auditor concerned of his or its appointment.

Compliances:

As per section 140(2) and (3) of the Act read with Rule 8 of Companies (Audit and Auditors) Rules, 2015, the resigning auditor shall file Form ADT-3 with the company and the Registrar of Companies (ROC) along with valid reasons within 30 days of the date of resignation.

The company shall file a notice of appointment in Form ADT-1 with the ROC within fifteen days of the meeting in which the auditor is so appointed.

The new auditor appointed under Rule 3 shall submit a certificate that:

- (i) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under sections 139, 141, and other applicable provisions of the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (ii) A written consent to act as the auditor.
- (iii) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (iv) The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- (v) The new auditor must communicate with the resigning auditor to ensure there are no professional or ethical concerns.

Conclusion:

Thus, the Statutory Auditor can be appointed as per the procedure mentioned above.

Section 139

- 13.** Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor. **(MAY 2018)**

Solution:

Law: Law similar to question above except last point

Conclusion: In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., up to the conclusion of the AGM to be held in 2027.

Section 139

- 14.** Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:
(i) First auditor (ii) Subsequent auditor **(6 Marks) (MTP M 21)**

Solution:

- (i) According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.
- (iii) In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.
- (iii) Appointment of First Auditor of non-government company
According to section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.
- (iv) Appointment of Subsequent Auditor of non-government company u/s 139(5) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Section 139

15. Shiv Limited is incorporated on 3.10.2020. The company is having a paid-up share capital of Rs. 5 crores. Following are key shareholders of the company:



The first auditor of the company has been appointed by the Board of Directors on 31.10.2020. The members of the company have objected to such an appointment by the Board of Directors. According to the members it's only the members who can appoint the first auditor.

Advise the company on the validity of such appointment as per the provisions of the Companies Act, 2013. Also, advise whether the contention of members of the company is correct.

(6 Marks) (MTP M 21)

Solution:

Law: According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

As per section 139(7), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of

the company shall appoint such auditor within the next 30 days; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

Conclusion: In the given question, Shiv Limited is a government company as 54.6% $[(1.5+1.23)/5 = 54.6\%]$ of the share capital is held by Central government and State Government (Punjab Government). Thus, the first auditor of Shiv Limited shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration. Thus, the appointment of first auditor by Board of Directors on 31.10.2020 is not valid. The Board of Directors can appoint the first auditor in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period of period 60 days. The Board of Directors of the company shall appoint such auditor within the next 30 days.

In the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting. Thus, the contention of members that it's only the members who can appoint the first auditor of the Government company, is not correct.

Section 139

- 16.** The auditor of ABC Limited (not a government company) has resigned on 31st December, 2023, while the financial year of the company ends on 31st March, 2024. Explain how such an auditor shall be appointed, as per the provisions of the Companies Act, 2013.

(MTP Jan 25) (MTP NOV 2019)

Solution:

Casual Vacancy due to resignation Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Section 139

- 17.** Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.

(3 Marks)(MTP M 21)

Solution:

According to section 139(6) of the Companies Act, 2013,

- (i) the first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company and the auditor so appointed shall hold office until the conclusion of the first AGM.
- (ii) If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and such auditor shall hold office till the conclusion of the first AGM.

Section 139

- 18.** The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold



office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases: **(6 Marks)(Nov 2020)**

- (i) Appointment of Mr. Tel by the Board of Directors.
- (ii) Re-appointment of Mr. Tel at the first AGM in the above situation.
- (iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. i.e., 4 years tenure.

Solution:

Law: As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

Conclusion: As per the given provisions following are the answers:

- (i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of section 139(6).
- (ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.
- (iii) As per law, auditor appointed shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

Section 140 Removal of Auditor

- 19.** Mr. Honest, an auditor of MM company Ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner. **(MTP NOV 2018)**

Solution:

Removal of Auditor by Tribunal [Section 140(5) of the Companies Act, 2013]

- (i) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central

Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

- (ii) Requirement for change of auditor: If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.
- (iii) whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of the order & the auditor shall also be liable for action u/s 447.

Section 140

20. Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place? (MTP NOV 2018)

Solution:

Law: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

Conclusion: The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Section 140

21. ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023.



Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013. (MTP May 24) (MTP Oct. 23)

Solution:

Law: Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Conclusion: Hence, in the instant case, the decision of X Ltd. to remove ABC & Associates, auditors of the company at the general meeting held on 25-5-2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Section 141 Disqualification of Auditor

22. Examine the following situations in the light of the Companies Act, 2013:

- (i) Mr. Prem, a Chartered Accountant, has been appointed as an auditor of A Limited in the Annual General Meeting of the company held in September 2023, in which he accepted the assignment. Subsequently, in January 2024 he joined as a partner in the consultancy firm where Mr. Ajay is also a partner. Mr. Ajay is also working as a Finance Executive of A Limited.
- (ii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role? (MTP Jan 25)(MTP Nov 24)

Solution:

Law:

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

Conclusion:

- (i) In the present case, Mr. Prem, an auditor of A Limited, joined as partner with consultancy firm where Mr. Ajay has become a partner and Mr. Ajay is also the Finance executive of A Limited. Hence, Mr. Prem has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of A Limited.
- (ii) In the present case, Mr. Tom is holding security of ₹1,00,000 in the B Limited, therefore, he is not eligible for appointment as an auditor of B Limited.

23. P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

- (i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh.
- (ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ₹1,50,000.
- (iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.) (PYQ Nov 2022)

Solution:

- (i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed

as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.

- (ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹1 Lakh. such person cannot be appointed as auditor of the company.
- (iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹5 Lakh, shall not be appointed as an auditor.

Conclusion:

- (i) Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ₹1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.
- (ii) In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ₹1 Lakh i.e. of an amount worth ₹1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.
- (iii) Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ₹10,00,000. Whereas P Limited holds one fourth of the paid-up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ₹5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

Section 141

24. Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

- (i) Chintamani is a practicing Chartered Accountant, and his spouse, Chitralekha, holds securities of Nagmani Ltd. valued at a face value amount of ₹80,000 (with a market value of ₹50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.
- (ii) Mani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company. (MTP Sept 24)(Nov 2023) **(3 Marks)(MTP M 21)**

Solution:

Law:

- (i) As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further the proviso provides that, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹1,00,000.
- (ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel.

Conclusion:

- (i) In the present case, Chitralekha (spouse of Chintamani, the auditor), is having securities of Nagmani Limited having face value of ₹80,000, which is within the prescribed limits under the proviso to section 141(3)(d)(i). Therefore, Chintamani will be eligible to be appointed as an auditor of Nagmani Limited.
- (ii) In the instant case, since Mani, real sister of Mr. Priyanshu (Chartered Accountant) is the CFO (a KMP) of Parivar Ltd., hence, Mr. Priyanshu will be disqualified to be appointed as an auditor in the said company.

Section 141

25. XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:

1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of ₹4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.
2. Mr. A's relative, Ms. C, has an outstanding debt of ₹2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013.

(RTP Sept 24)

Solution:

Law: According to section 141(3)(d)(ii) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹5 Lacs.

Conclusion: In this scenario:

1. Mr. A's partner, Mr. B, has a debt of ₹4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of ₹2 Lacs from DEF Ltd., an associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is ₹6 Lacs (₹4 Lacs + ₹2 Lacs), which exceeds the ₹5 Lacs threshold mentioned in the provision.

Therefore, Mr. A is disqualified from being appointed as the auditor of XYZ Ltd. under section 141(3)(d)(ii) of the Companies Act, 2013, as the combined indebtedness of his partner and relative surpasses the permissible limit.

Section 141

26. Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹150000/- (market value ₹95000/-)?

(RTP NOV 2018) (NOV 2018)

Solution:

Law: As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

Conclusion: 1 In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹1 lakh, such a transaction is valid.

2 Yes, the answer will be different in case where the face value of acquired shares is ₹1,50,000. Then in that case:

- (i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or
- (ii) Auditor has to vacate his office.

Section 141

27. Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:



- (i) 'Ms. Rekha', a practicing Chartered Accountant, and 'Mr. Alok', who is the spouse of 'Ms. Rekha', holds securities of 'Charcoal Ltd.' valued at a face value amount of ₹85,000 (with a market value of ₹75,000). The directors of Charcoal Ltd. are considering the appointment of 'Ms. Rekha' as an auditor for the company.
- (ii) 'Mr. Puri', a practicing Chartered Accountant, has a debt of ₹7 lakh owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of 'Mr. Puri' as an auditor for the company.
- (iii) 'Ms. Komal', the real sister of 'Mr. Sharad', a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of 'Mr. Sharad' as an auditor for the company. (PYQ Nov 2023)

Solution:

Law:

As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹1,00,000.

Conclusion:

- (i) In the present case, Mr. Alok (spouse of Ms. Rekha, the auditor), is having securities of Charcoal Limited having face value of ₹85,000, which is within the limit as per requirement of under the proviso to section 141(3)(d)(i). Therefore, Ms. Rekha will be eligible to be appointed as an auditor of Charcoal Limited.
- (ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 lakh. In the instant case, Mr. Puri will be disqualified to be appointed as an auditor of RAI Limited as he is indebted to RAI Limited for ₹7 lakh.
- (iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Ms. Komal, real sister of Mr. Sharad (Chartered Accountant) is the CFO (a KMP) of Biotech Limited, hence Mr. Sharad will be disqualified to be appointed as an auditor in the said company.

Section 141

28. ABC & Co.' is an Audit Firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as an Auditor 4, 6 and 10 Companies respectively.



1. Provide the, maximum number of Audits remaining in the name of "ABC & Co."
2. Provide the maximum number of Audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.
3. Can ABC & Co. accept the appointment as an auditor in 60 private companies having paid-up share capital less than 100 Cr., which has not committed default in filing its financial statements u/s 137 or annual return u/s 92 of Companies Act with the Registrar, 2 small companies and 1 dormant company?
4. Would your answer be different, if out of those 60 private companies, 45 companies are having paid-up share capital of 110 crore each? [MTP-Oct. 20]

Solution:

Law: As per Section 141(3) (g) of the Companies Act, 2013

Person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies; other than one person companies, dormant companies, small companies & private companies] having paid-up share capital less than ₹100 crores;

Conclusion:

In present case,

1. ABC & Co. can hold appointment as an auditor of 40 more companies as computed below:
Total Number of Audits available to the Firm = $20 \times 3 = 60$ Number of Audits already taken by all the partners
In their individual capacity = $4 + 6 + 10 = 20$
Remaining number of Audits available to the Firm = 40
2. Mr. A can hold: $20 - 4 = 16$ more audits. Mr. B can hold $20 - 6 = 14$ more audits and Mr. C can hold $20 - 10 = 10$ more audits.
3. ABC & Co. can hold appointment as an auditor in all the 60 private companies having paid-up share capital less than 100 crore, 2 small companies and 1 dormant company as these are excluded from the ceiling limit of company audits given under section 141(3) (g) of the Companies Act, 2013.
4. ABC & Co. can accept the appointment as an auditor for 2 small companies, 1 dormant company, 15 private companies having paid-up share capital less than 100 crore and 40 private companies having paid-up share capital of 110 crore each in addition to above 20 company audits already holding.

Section 142 Remuneration of Auditor

29. HD Software Limited is engaged in the business of providing software services. The company appointed its statutory auditors (not the first auditor). The Board of directors of the company informed the auditor that the fees shall be fixed by the Board of directors only. But the auditor objected to the same. Now the directors have approached you to advise them whether they can solely fix the remuneration of the auditor. (RTP Jan 25)(PYQ May 2022)

Solution:

Law: Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. However, the Board may fix remuneration of the first auditor appointed by it.

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

Conclusion: As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine as they are not the first auditor.

Hence, the contention of the Board of directors that they can fix the remuneration of the auditor on their own is not valid.

Section 142

- 30.** Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013. (RTP Nov 23)

Solution:

Law: Same as above

Conclusion: As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine, they may also delegate their powers to BOD

Section 144 Auditor not to Render Certain Services

- 31.** The Board of Directors of Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of Avni Ltd., taking into account the consequences, if any, of accepting this proposal?

(MTP Sept 24)

Solution:

Law: According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

Conclusion:

In the said instance, the Board of directors of Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Section 145 Auditor to sign Audit report

32. State the provisions of the Companies Act, 2013 regarding the signing of the Audit report by the Auditors of the company. (MTP MAY 2018)

Solution:

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

- (i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).
- (ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Section 147 Punishment for Contravention

33. ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013. (PYQ May 2022)

Solution:

Law: According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

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

Conclusion:

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

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

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

