KK's Message – Please Read it Once…….

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2. *Covers multi-concept questions to improve overall conceptual clarity.*
3. *Focuses on different answer presentations as expected by ICAI.*
4. *Includes questions targeting common mistakes made in exams.*
5. *Helps you handle tricky and confusing exam situations.*
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- These questions will help you once you have revised the chapters , so you can refer my revisions for covering the chapters.
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Q1. Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022? [ICAI Study Mat]

Ans. According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless-

(a) the person has notice that the former partner has ceased to be a partner of the LLP; or
(b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.
Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

Q2. Sulagna, Sukanya & Associates LLP was formed on 1st November, 2024 to be engaged in the business of manufacturing affordable range of fashionable accessories for women. Sulagna a fashion designer had appointed Shreesh a qualified Chartered Accountant to maintain and finalize the accounts on a January to December basis thereby preparing the financial statements for first two months ending 31st December, 2024. Shreesh differed from the view and advised her for April to March as the financial year thereby urging upon such account finalization from November 2024 to March 2025 instead. Meanwhile Dilip a Karta of a HUF in which Sukanya is also a member has approached the LLP and offered to be admitted as a partner.
Considering the provisions of the Limited Liability Partnership Act, 2008, answer the following:
(i) Whether the advice of Sulagna for maintaining the accounts on January to December basis hold good at law?
(ii) Whether the offer given by Dilip to induct the HUF as a partner be considered?
(iii) What would be your answer if instead of Dilip, a Charitable Trust had approached to become a partner in the LLP? [PYQ-Sep 25]

Ans. (i) As per section 2(1)(l) of the LLP Act, 2008, "Financial year", in relation to a LLP, means the period ending on the 31st day of March every year.

Provided that in the case of a limited liability partnership incorporated on or after the 1st day of October of a year, the financial year may end on the 31st day of March of the following year.
In terms of the above provision, advice of Sulagna for maintaining the accounts on January to December basis is not valid.

(ii) Section 5 of the Limited Liability Partnership Act, 2008 provides that any individual or body corporate can be a partner in LLP. However, it has been clarified vide MCA General Circular that a HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008.
Therefore, a HUF or its Karta cannot become a partner or designated partner in LLP. Hence, Dilip cannot be inducted as a partner to the LLP.

(iii) The answer would be the same as a trust is not a body corporate in India. A trust is a legal arrangement for managing property for the benefit of another person, called the beneficiary. The person who manages the

property is called the trustee. Hence, in that case too such Charitable Trust could not be inducted as a partner to the LLP.

Q3. Raman, Sita and Mohan are partners in an LLP firm RSM & Co. engaged in consultancy services. As per the LLP agreement, profits and losses are shared equally. Raman, requiring funds for personal purposes, transfers 40% of his share of profits to his friend Arjun.

After the transfer, Arjun claims that:

(a) He is entitled to participate in the management of RSM & Co.

(b) Since Raman has transferred part of his rights, he is deemed to be disassociated as a partner of the LLP.

You are required to advise, with reference to the Limited Liability Partnership Act, 2008:

(i) Whether Raman's partial transfer of rights will lead to disassociation or dissolution of the LLP.

(ii) Whether Arjun is entitled to participate in the management of RSM & Co.

[RTP-Jan 26]

Ans. As per section 42 of the Limited Liability Partnership Act, 2008,

1) The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

In the given question, Raman has transferred 40% of his share of profits in RSM & Co. to his friend Arjun.

In view of the above provisions and facts of the question:

(i) Transfer of rights does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership. Hence, Raman's partial transfer of rights will not lead to disassociation or dissolution of the LLP.

(ii) Transfer of right pursuant does not, by itself, entitle the transferee or assignee to participate in the management in the activities of the limited liability partnership. Hence, Arjun is not entitled to participate in the management of RSM & Co.

Q4. NS & Associates LLP was formed in the year 2020 and it was engaged in the business of manufacturing of plastic parts for automobiles. It constituted of Mr. Naveen and Mr. Suresh as designated partners who were responsible for obtaining contracts from various automobile manufacturers across the country for supply of spare parts for vehicles.

In the year 2021 an investigation was ordered by the Tribunal against the LLP in connection with a financial fraud worth Rs. 50,25,000. Mr. J one the Accounts Manager and employee of the LLP was accused by the complainant, as one of the perpetrators to the fraud. [PYQ-Jan 25]

The Tribunal levied a penalty of Rs. 1,25,000 to be paid by Mr. J on his conviction. Mr. J approached the Tribunal and provided vital information about the other black sheep involved in the fraud thus aiding in the investigation process. The Tribunal is considering of providing some

relief in the penal action taken against him, while the LLP is planning to suspend Mr. J from service for this act. Considering the provisions of Limited Liability Partnership Act, 2008:
(i) Decide whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?
(ii) Can the LLP suspend Mr. J from service for commission of the act, of revealing the name of the other accused involved in the fraud?

Ans. Section 31 of the Limited Liability Partnership Act, 2008 provides that:

1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:
   - such partner or employee of an LLP has provided useful information during investigation of such LLP; or when any information given by any partner or
   - when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

On the basis of the above provisions, the question can be answered as under:

(i) Yes, the Tribunal has the power to waive or reduce the penalty of Rs. 1,25,000 being imposed on Mr. J as he has provided useful information that is helpful towards investigations in the case of fraud by the LLP.

(ii) Section 31(2) of the LLP Act, 2008 further provides that-

No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

Hence, Mr. J cannot be suspended from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

Q5. XYZ LLP was incorporated on 15th March, 2023, with its registered office in Mumbai. The LLP received a legal notice from a supplier at this address. However, the partners claim they never received the notice, as they had shifted their office to Pune on 10th January, 2024, but had not
informed the Registrar about the change.
Based on the provisions of the provisions of the Limited Liability Partnership (LLP) Act, 2008, advise whether the service of notice at the Mumbai address is legally valid. [MTP-May 25]

Ans. Registered Office of LLP and Change therein

As per section 13 of the Limited Liability Partnership Act, 2013,

1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

In the given question, the registered office of XYZ LLP is at Mumbai. Further, the question informs that the LLP has shifted their office to Pune.
In the light of the provisions of the Act and the facts of question, the registered office of XYZ LLP will be Mumbai as it is registered with the Registrar. The changed office to Pune cannot be treated as a registered office.
Thus, the service of notice at the Mumbai address is legally valid.

Q6. Analyzing the role and liabilities of Designated Partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008, answer the following questions:
(i) In a LLP where all partners are corporate entities, can a corporate body be appointed as a designated partner?
(ii) If an LLP agreement does not specify the designated partners, whether LLP can be validly formed without designated partners under the LLP Act, 2008?
(iii) A designated partner of an LLP in India is planning to relocate permanently to another country.
(iv) XYZ LLP was penalized for non-compliance, but one of the designated partners claims he was unaware of the regulatory requirements. Can he avoid liability? [MTP-May 25]

Ans. The LLP Act, 2008, under Sections 7 and 8, outlines the eligibility, responsibilities, and liabilities of Designated Partners (DPs). Following are the answers-
(i) Every LLP must have at least two designated partners, and at least one must be a resident of India. Where if, all partners are bodies corporate, at least two individuals must be appointed as designated partners. Therefore, as per the stated law a corporate body cannot be appointed as a designated partner. Only individuals are eligible to be appointed as DPs.

(ii) The incorporation document must specify the designated partners, or they must be appointed as per the LLP agreement.
Accordingly, if an LLP agreement does not specify the designated partners, then the partners specified in the incorporation document containing designated partners can validly form the LLP in compliance with the LLP Act, 2008.

(iii) As per the LLP Act, 2008, at least one designated partner of the LLP must be a resident of India. A resident of India is defined as a person who has stayed in India for at least 120 days in the financial year. If the designated partner is permanently relocating, he may no longer require to fulfill the residency criteria of staying in India for at least 120 days in the financial year.

(iv) Designated partners are responsible for ensuring that LLP complies with the LLP Act, 2008.
(a) If the LLP fails to comply with statutory requirements, designated partners are held personally liable for penalties.
(b) They may face fines or legal consequences for any violations of the LLP Act.

Where if, the designated partners, claims he was unaware of the regulatory requirements. He cannot take plead of the ignorance and cannot avoid the liability.

Q7. Ravi and Neha, two entrepreneurs, plan to start a new Limited Liability Partnership (LLP) focused on AI-based software development. They decide to name their LLP as "NextGen AI Innovations LLP." Before proceeding with the incorporation, they want to ensure that their chosen name is available and reserved. They apply to the Registrar through the prescribed web-based platform and pay the required fee for name reservation.
Describe the legal requirements as to the reservation of a name as per relevant provisions under the Limited Liability Partnership Act, 2008. [RTP-Sep 25]

Ans. Under section 16 of the Limited Liability Partnership (LLP) Act, 2008, a person may apply to the Registrar for the reservation of a name in either of the following circumstances:
(a) As the name of a proposed LLP, or
(b) As the name to which an existing LLP proposes to change its name.

The application must be made in the prescribed form and manner along with the prescribed fee.
Upon receiving such an application, the Registrar may, if satisfied that the name is not one liable to be rejected under section 15(2) of the LLP Act, reserve the name for a period of three months from the date of intimation by the Registrar.

As per section 15(2), no LLP shall be registered by a name which, in the opinion of the Central Government is—
(a) undesirable; or
(b) identical or too nearly resembles to that of any other LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999.

Q8. Harish, Priyam and Priyesh are three advertising professionals specialized in the field of creating short advertisement films for various Fast Moving Consumer Goods (FMCG) companies. They have been engaged in their businesses separately as sole-proprietors, but have now decided to join hands and form a Limited Liability Partnership. On 10.04.2024, the e-Form RUNLLP is filed thereby to reserve the name of the LLP as HPP & Associates LLP which has been approved by the Registrar along with e-Form. The e-form FiLLiP has also been filed containing details of partners and their consent.
Meanwhile even after incorporation as HPP & Associates LLP on 30.04.2024 the LLP could no finalize the LLP agreement as Harish and Priyam have agreed to contribute `1.15 crore to the LLP whereas Priyesh has desired and insisted to monetize his future services for one year to the LLP as his capital contribution, which has been opposed by the other two partners as beyond law. However, a consensus was drawn between the above three and a common consensus LLP agreement was submitted on 20.05.2024.
The LLP has further planned to induct Srijan Cooperative Society as one of its partners.
Considering the provisions of the Limited Liability Partnership Act, 2008, answer the following:
(i) Whether the Registrar would accept the LLP agreement so submitted after 20 days of incorporation as in compliance with law?
(ii) Whether the opposition of the desire of Priyesh on matter and form of his capital contribution, correct?
(iii) Whether Srijan Cooperative Society can be inducted as a partner in the LLP? [PYQ-Sep 25]

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

As per Rule 21 of the LLP Rules, 2009, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days of the date of incorporation.
Changes, if any, made therein shall be filed with the Registrar within thirty days of such change.

In terms of the above provisions, the Registrar will accept the LLP agreement which has been ` submitted after 20 days of incorporation in compliance with law.
(ii) According to section 32(1) of the Limited Liability Partnership Act, 2008, a contribution of partner of the LLP may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.
Thus, Priyesh's plea for contributing his future services for one year to the LLP as his capital contribution is tenable and therefore the other partners are not correct in opposing to Mr. Priyesh for the same.

(iii) According to section 5 of the Limited Liability Partnership Act, 2008, any individual or bod corporate may be a partner in a LLP.
The definition of body corporate as given under the LLP Act, 2008, does not include a co-operative society registered under any law for the time being in force. Hence, Srijan Cooperative Society cannot be inducted as a partner in LLP.

Q9. Examine the validity of the following statements with reference to the General Clauses Act, 1897:
i. Insurance Policies covering immovable property have been held to be immovable property
ii. The word "bullocks" could be interpreted to include "cows". [PYQ-July 21]

Ans. Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid.
Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.
The word 'bullocks' could be interpreted to include 'cows': This statement is not valid.
Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks could not be interpreted to include 'cows'.

Q10. Examine the validity of the following statements with reference to the General Clauses Act, 1897:
Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? [MTP-May 22]

Ans. As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Q11. As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company? [RTP-Nov 20]

Ans. Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Q12. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice:

(i) The dates during which Komal Ltd. is required to pay the dividend?

(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? [PYQ-Nov 18]

Ans. As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).

(ii) Transfer of unpaid or unclaimed divided: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

Q13. Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ^20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

[PYQ-Nov 22]

Ans. As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, service shall be deemed to be effected by:

(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.

Case Laws

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

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

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

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

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

Q14. The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?
(ii) In case of any irregularities in the publication of the draft, can it be questioned?

(iii) Is MCA entitled to make suitable changes in the draft?
(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft? [PYQ-May 22]

Ans. The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:
(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.
(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Q15. Mr. N is caught stealing a bicycle, an offense punishable under the Indian Penal Code. According to Section 379 of the IPC, the punishment for theft was charged against him. Elaborate how the term "imprisonment" levied under the General Clauses Act, 1897, can be applied in line with the relevant law specified in the IPC? [RTP-May 25]

Ans. According to section 3(27) of the General Clauses Act, 1897 states that 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code. By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, rigorous, that is with hard labor and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.
In this case:
If the court considers Mr. N's offense as a minor theft and believes it does not warrant harsh punishment, it might sentence him to simple imprisonment.
However, if the theft involved force, was committed in a violent manner, or if Mr. N has a history of criminal behavior, the court may decide to impose rigorous imprisonment.

Q16. Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice? Give your answer with reference to the provisions of the General Clauses Act, 1897. [MTP-May 24]

Ans. According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.
Further, on the basis of decision taken by the apex court in case of Jagdish Singh vs Natthu Singh, where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.
In the given case, the Income Tax Department sent the show cause notice properly by a registered post at the address which was in the records of the department. Hence, it was a proper service of notice. Further, refusal by current owner of house to accept the notice, will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address. Therefore, Income Tax Department is correct in its decision.

Q17. Dream Builders Limited was engaged in the activity of building and selling budget friendly apartments. It recently started a new project at Noida. Pending approval, the builders started the construction work. On verification of documents, the Corporation of Noida refused to sanction the permission and the Assistant Commissioner Mr. S issued a demolition order, signed by him under his authority.
The builders filed an appeal at the court and stayed the demolition. After 6 months of court trials, the verdict was announced in favour of the Corporation of Noida. Mr. G, the present Assistant Commissioner initiated the demolition process.
The builders argued that the order was passed by Mr. S and since he is no longer in the authority, the order stands cancelled and Mr. G cannot demolish the construction.
Referring to the provisions of the General Clauses Act, 1897, determine the validity of the claim of the builders. [PYQ-May 25]

Ans. As per Section 17 of the General Clauses Act, 1897, in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

As per Section 18 of the General Clauses Act, 1897, in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

In other words, the General Clauses Act, 1897, provides general definitions and rules for interpreting laws, particularly Central Acts and Regulations. Section 18 specifically deals with the continuity of laws when a functionary is replaced. It clarifies that when a law refers to a specific official, it's not limited to that individual but extends to their successors.

This means that if a law grants power to a particular officer, that power also extends to their successor, unless explicitly stated otherwise. A successor in office can generally continue a case under the General Clauses Act, and this is also related to the doctrine of merger.

As per GCA, the power to appoint includes the power to appoint ex-officio, meaning the authority is attached to the office, not the individual. Further, under section 17, official acts continue to remain valid despite changes in officeholders.

As per the facts of the question and a combined reading of Sections 17 and 18 of the General Clauses Act, 1897, Mr. G, in his capacity as the current Assistant Commissioner, is legally competent to order the demolition of the construction. This is because the original order was
issued by Mr. S, the former Assistant Commissioner, in his official capacity, and the authority to act continues with the office, not the individual.
Hence, the claim of Dream Builders Limited is not valid.

Q18. Adnan, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Adnan is correct?

[PYQ-Jan 21]

Ans. Rule of Literal Construction:
Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation. Sometimes, occasions may arise when a choice has to be made between two interpretations - one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one. When we talk of disclosure of 'the nature of concern or interest, financial or otherwise1 of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.
In the given question, Adnan (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Here,

he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Q19. If it is defined as:
(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".
(ii) "Person" includes, under the Consumer Protection Act,1986.
How would you interpret/construct the nature and scope of the above definitions?
[PYQ-Nov 19]

Ans. Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definiti on section.

Thus,
(i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall deemed to be company.
(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Q20. "No vehicles are allowed in the park." Comment on the statement, explaining the concept of 'Construction' in legal interpretation. Mention its significance in determining the legal interpretation. [MTP-May 25]

Ans. In legal interpretation, 'construction' refers to the process of determining the true meaning and intent behind a statute or legal document. It extends beyond the literal words of the text and considers the broader legislative purpose, historical context, and other relevant factors. This method helps courts and legal professionals resolve ambiguities and apply laws in a just and reasonable manner.
As per the stated statement "No vehicles are allowed in the park" can have a strict literal interpretation which would mean that all types of vehicles, including bicycles, baby strollers, and even wheelchairs, are prohibited in the park.
However, through legal construction, courts may consider the legislative intent behind the law. If the primary goal is to prevent pollution and ensure pedestrian safety, the restriction may only apply to motorized vehicles, while bicycles and strollers may still be allowed.

Significance of Construction in Legal Interpretation:
1. Clarifies Legislative Intent: Construction ensures that laws are interpreted in alignment with the intention of the lawmakers rather than relying solely on the literal meaning of the words.
2. Resolves Ambiguities: Many legal texts contain vague or unclear language. Construction helps eliminate confusion and ensures a consistent application of the law.

3. Ensures Justice: By considering context and broader objectives, legal construction prevents unfair or unintended consequences that could arise from rigid literal interpretations.
4. Adapts Laws to Changing Contexts: Societal norms and circumstances evolve over time. Construction allows laws to be interpreted in a way that remains relevant and applicable to modern situations.

Q21. Ms. Mona employed in X-One Corporation, adopted a three-month-old baby applied for maternity leave under her company's policy, which provided 26 weeks of paid maternity leave. However, her employer rejected the request, stating that maternity leave applies only to biological mothers as per the law. Mona approached the court against the company decision. In related to the above case, explain how the Rule of Beneficial Construction can be applied and interpreted as a welfare legislation? [MTP-May 25]

Ans. The Rule of Beneficial Construction is a judicial approach used to interpret statutes in a way that best serves their intended purpose, particularly when dealing with welfare legislation. This principle is applied when a legal provision can be understood in more than one way, allowing courts to choose the interpretation that ensures maximum benefit to the intended class of people.

In welfare laws, such as labour laws, social security laws, and laws protecting marginalized communities, this rule helps remove ambiguities and ensures that the law is applied in a just and equitable manner. One area where this rule has been significantly applied is in maternity leave benefits for adoptive mothers.
Maternity leave is an essential right granted to women to allow them time to recover from child birth and care for their new-borns. Laws in many countries, including India, grant paid maternity leave to working women.

However, a strict interpretation of such laws often restricts these benefits only to biological mothers, creating an unfair disadvantage for adoptive mothers who also need time to bond with their adopted child.

The court will apply the Rule of Beneficial Construction, stating that:
1. Purpose Over Literal Meaning: The law's primary objective is child welfare and mother-child bonding, not just post-delivery recovery. Therefore, maternity leave should not be denied based on a narrow interpretation.
2. No Discrimination Between Biological and Adoptive Mothers: Excluding adoptive mothers would create unjust discrimination against working women who adopt, violating the spirit of gender equality.
   Hence the court can ruled in favour of the adoptive mother, directing the employer to grant her full maternity leave benefits.

Q22. Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:
(i) MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2004.
(ii) WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.
(iii) WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.

[PYQ-May 2005]

Ans. Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':
a) A company
b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a person resident in India:
a) Any person or body corporate registered or incorporated in India.
b) An office, branch or agency in India owned or controlled by a person resident outside India.
c) An office, branch or agency outside India owned or controlled by a person resident in India.

The answer to the given problem is as under:
(i) MKP Limited as well as the New York branch of MKP Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.
MKP Limited is incorporated in India. Therefore, it is a 'person resident in India'.

MKP Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of MKP Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India and so the New York branch is a 'Person resident in India'.

(ii) WIP Ltd. as well as Chandigarh branch of WIP Ltd. is a person'. WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India. The Chandigarh branch of WIP Ltd. is a 'Person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident outside India1.

(iii) The Singapore branch of WIP Ltd., though not owned, is controlled by the Chandigarh branch. The Singapore branch is a 'Person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'

Q23. Miss Deepika is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA? [Case Study]

Ans. Miss Deepika stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v) (B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Deepika may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
If, however, she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Q24. Mr. G, an Indian National desires to obtain foreign exchange on current account transactions for following purposes:

(i) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company.

(ii) Remittance of hiring charges of transponder.

Advise G whether he can obtain the foreign exchange and, if so, under what conditions?

[PYQ-CA Final]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited

(ii) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for remittance of hiring changes of transponder requires the prior approval of the Central Government.

However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account or EEFC.

Q25. Mr. F, an Indian National desires to obtain foreign exchange for the following purposes:

(a) Payment of US $ 10,000 as commission on exports under Rupee State Credit Route.

(b) US $ 30,000 for a business trip to U.K.

(c) Remittance of US $ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what conditions. [PYQ-CA Final]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person.

However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(a) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of commission on exports under Rupees State Credit Route (except commission up to 10% of invoice value of exports of tea and tobacco) is prohibited.

Therefore, payment of US $ 10,000 as commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

(b) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to $ 2,50,000 for travel for business under the Liberalized Remittance Scheme. Drawal of foreign exchange in excess of US Dollar 2,50,000 shall require prior approval of the Reserve Bank of India.
Therefore, Mr. F can obtain US Dollar 30,000 for business tour to U.K. without any approval of the Reserve Bank of India.

(c) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange exceeding US$ 1,00,000 for the purpose of remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State level sports bodies requires the prior approval of the Central Government.

In the given case, the drawal of US $2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia is organized by Mr. F, who is an Indian National (i.e., not any International, National or State level Sports Body).
Therefore, Mr. F can obtain US Dollar 1,00,000 without any permission, but for drawal of additional US Dollar 1,00,000, prior approval of the Central Government is required.

Q26. State whether there are any restrictions in respect of the following transactions:
(i) Drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.
(ii) Purchase by a person resident outside India of shares of a company in India engaged in plantation activities. [PYQ-CA Final]

Ans. (i) Amortization of loans is permitted
Section 6 specifically mentions that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of -
(a) amortization of loans in the ordinary course of business; or
(b) Depreciation of direct investments in the ordinary course of business.
Thus, there is no restriction on drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

(ii) Investment in plantation activities is prohibited
The Reserve Bank of India has framed Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. As per these Regulations, no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage in agricultural or plantation activities.
Thus, a person resident outside India cannot purchase shares of a company in India engaged in plantation activities.

Q27. Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.
Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions? [MTP-May 24]

Ans. Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.

Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Q28. Mr. V is a person of Indian origin who had moved to USA along with his wife in the year 1998 and had been living there until 2024. He was holding joint bank accounts with his wife in USA since 1998. On the demise of his wife on 17th November, 2024, he had returned permanently to India on 24th November, 2024. He also inherited his wife's money after her death, which got transferred to his bank account in USA. After few days of his return to India, he has paid premium from his bank account in USA of his insurance policy, which he had taken when he was in USA. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether Mr. V is permitted to carry out the above transactions. [PYQ-May 25]

Ans. As per Section 2(v) of the Foreign Exchange Management Act, 1999,
"Person Resident in India" includes a person residing in India for more than 182 days during the course of the preceding financial year but does not include, a person who has come to or stays in India, in either case, otherwise than for any purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

As per provisions of the Foreign Exchange Management Act, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th January, 2014 has issued a clarification on Section 6(4) of the Foreign Exchange Management Act, 1999. This circular clarifies that Section 6(4) of the Act covers the following transactions:

1. Foreign currency accounts opened and maintained by such a person when he was resident outside India.
2. Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.

In the given question Mr. V has permanently returned to India on 24th November, 2024. Hence, he will be treated as a person resident in India from 24th November, 2024.
According to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident in India is permitted to maintain his foreign currency accounts and take insurance policy from an insurance company outside India.

Based on the above provisions, we can conclude that Mr. V who is residing in India since 2024, is now, a person resident in India and he is permitted to hold his bank account in USA and also pay for his insurance policy from that account.

ALTERNATE ANSWER:
According to the Section 6(4) of the Foreign Exchange Management Act, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The RBI vide A.P. (DIR Series) Circular No.90 dated 9th January, 2014 has issued a clarification on Section 6(4) of the FEMA Act, 1999. This circular clarifies that section 6(4) of the Act covers the following transaction: In terms of Section 6 (4) (iv) of FEMA, 1999, a person resident in India can freely utilize their eligible assets abroad, as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make fresh investments abroad without approval of the Reserve Bank of India, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of the funds forming part of eligible assets held by them and the transactions is not in contravention to the extant of FEMA provisions.

V has inherited money from his wife, who was a person resident outside India. V has been a resident in India since 24th November, 2024, as he had permanently returned to India from abroad. Thus, amounts in his foreign bank accounts are classified as eligible assets under the FEMA.

Therefore, under Section 6(4) of the FEMA, 1999 and vide the above RBI circular, 'V' can pay the insurance premium from his bank account in the USA for his insurance policy taken in the USA, as taking an insurance policy is a permitted transaction under Schedule I of the Foreign Exchange Management (Permissible Capital Account Transactions) regulations, 2000. So, by that account, paying a premium is also a permissible transaction.

Q29. Ms. Pearl was an Indian citizen who got a job in a software company in USA. She went to USA and stayed there for 15 years. During her stay, she purchased a house in USA for her residence. Then due to some personal issues she moved back to India and joined a software company in India.
As she had moved back to India, she let out her house in USA and deposited the obtained rent in her account in USA.
Advise whether Ms. Pearl can purchase another house in USA from her account in USA? Give you answer referring to the provisions of the Foreign Exchange Management Act, 1999.
[RTP-Sep 25]

Ans. According to section 6(4) of the Foreign Exchange Management Act, 1999, (the Act) a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
As per the fact, Ms. Pearl during her stayed in USA purchased a house in USA.
As per the above provision and facts of the case, Ms. Pearl can purchase the new house in USA from her USA account.

Q30. Murari Lal, a person resident outside India, has invested in four residential immovable properties under construction in Kolkata. Each property is negotiated at Rs. 2 crore, with the companies owned by builders. This amount is to be paid in two instalments as 60% on immediate basis on booking and the balance on possession of the properties.
The above transaction is done by the companies owned by builders through two brokers from USA on commission basis. Mr. Murari Lal as per the terms and conditions remitted 60% of the amount of all four immovable properties directly to the company.
Answer the following explaining the provisions of the Foreign Exchange Management Act (FEMA), 1999:
(i) Whether investment by Mr. Murari Lal and payment of commission on this transaction is permissible?
(ii) How much maximum amount of commission can be paid to each broker without RBI approval?
(Ignore the USD - Rupee Exchange Rate) [PYQ-Jan 25]

Ans. The investment in immovable properties in India by Mr. Murari Lal, a resident outside India, is a Capital Account Transaction which is permissible as per Schedule II of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 which permits Acquisition and Transfer of Immovable Property in India by a Person Resident Outside India.

According to Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more.

As per the facts of the question and mentioned provisions, the following are the answers to the questions asked:
(i) Yes, the investment by Mr. Murari Lal and payment of commission on this transaction is permissible.
(ii) Calculation of maximum commission that can be paid without the approval of RBI.

The maximum amount of commission that can be paid to each broker for each transaction, without RBI approval is, more of- USD 25,000 or Rs. 6 lakh [i.e. 5% of (60% of 2 crore)].
Thus, Rs. 6,00,000 can be paid to each broker as commission without taking any prior approval of the RBI.

Q31. (i) Mr. Amrish has been admitted to a postgraduate program at a foreign university and intends to join soon. The annual course fee is approximately Rs. 3,50,000. Kindly advise his parents on how they can make the remittance for the fees under the provisions of the Foreign Exchange Management Act (FEMA), 1999.
(ii) After completing his studies, Mr. Amrish is employed by a joint venture of a foreign company in India. The company intends to send him on deputation to handle business operations abroad. His family resides in India, and he would like to know if he can remit his salary to support their maintenance in India. Advise Mr. Amrish as per the provisions of the Foreign Exchange Management Act, 1999. [RTP-May 25]

Ans. (i) Under the Foreign Exchange Management Act (FEMA), 1999 read with the Schedule III of the FEM (Current Account Transactions) Rules, 2000, the overall limit prescribed is generally USD 250,000. Any additional remittance in excess of such limit shall require prior approval of the RBI. In the given case, the remittance of fees of Amrish for pursuing education abroad, may avail exchange facility for an amount in excess of the limit prescribed under the LRS in a Financial Year. In such a case, the applicable limit for such an individual would be reduced from USD 250,000 by the amount so remitted.

(ii) Under the Foreign Exchange Management Act (FEMA), 1999, Mr. Amrish can remit his salary earned abroad to his family in India, subject to the following regulations:

A person (who is resident but not permanently resident in India) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

As per the stated law, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

Q32. A General Meeting was scheduled to be held on Friday, 15th April, 2022 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 09-04-2022 was deposited by Mr. Y with the company at its registered Office on 11-04-2022. 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 12-04-2022 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2022. 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? [PYQ-May 23]

Ans. 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.

Q33. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

1. 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.
2. The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
3. Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting. [PYQ-Dec 21]

Ans. 1. Rule 17 (5) of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under Sec. 102 of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

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 for the resolution proposed to be passed at the meeting.

2. The notice shall be signed by all the requistionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

Hence, it is imperative for joint holders (or by requisitionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

3. According to Sec. 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

Bonus Q. 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 Rs.4000, has the right to inspect the Register of Members? [ICAI Study Mat]

Ans. (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.

Q34. Bhola Limited 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. Prateek as the 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.

[PYQ-Nov 19]

Ans. 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), an explanatory 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.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

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.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q35. 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. [MTP-May 21]

Ans. As per Rule 18 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized. A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice. The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email id s are already registered.

In the light of the above provisions of the Act, 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.

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

Q36. 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. [MTP-May 18]

Ans. 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:

Order of demand for poll by the chairman of meeting:

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.

Q37. Pakka Cement Ltd. (PCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. PCL was incorporated in July 2000 with an authorized capital of ₹ 1,000 crores. According to financial statements as on 31st March, 2023, paid-up capital of company was ₹ 600 crores and free reserves were ₹ 650 crores. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.

PCL is planning to expand its existence throughout the country. For this purpose, Company has taken ₹ 200 crores term loan and ₹ 125 crores of Working Capital loan from Banks on 18lh June, 2023. Charge was created on all the assets of company on that day for above loan of ₹ 325 crores, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to PCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023. PCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22nd August, 2023.78% of members have given their consent to convene

AGM at shorter notice due to urgent need of funds for the expansion plan. With reference to provisions of Companies Act, 2013, answer the following questions:
(i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?
(ii) Which type of Charge was created by Company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of Companies Act, 2013?
(iii) Whether the notice given to convene AGM at shorter notice was in compliance of Companies Act, 2013? (5 marks)

Ans. (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 shall be kept at the registered office of the company. Section 88 (1) provides that every company shall keep and maintain the register of members.
However, such registers 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, Pakka Cement Limited (PCL) can keep the Registers of members at Faridabad (as around 15% of total members are resident of Faridabad) by passing a Special Resolution at General Meeting.

(ii) A 'Floating Charge' is created on assets or a class of assets which are of fluctuating nature or changing in nature like raw material, stock in trade, debtors, and the like. the assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale.
As per section 77 of the companies act, 2013, if the registration of charge was not effected with in the original period of 30 days, the registrar may, on an application by the company allow such registration to be made with in a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered with in the extend period as above, the company shall make an application and the registrar is empowered to allow such a registration to be made with in a further period of 60 days after payment of prescribed ad valorem fees.
In the instant case, PCL created a charge on 18th June, 2023 but failed to register. It on 18th August it filed the application for registration of charge. Since the charge has to be filed by 17th August 2023 (with in 60 days from 18th June 2023) with additional fees, the application can be filed within a further period of 60 days i.e. by 17th October, 2023 after payment of prescribed ad valorem fees.

(iii) According to Section 101 (1) of the Companies Act 2013, general meetings need to be called by giving at-least a 21 days clear notice.
However, a General Meeting may be called after giving shorter notice then that specified in the sub section if constant, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than 95% of the members entitled to vote thereat. In the instant case, PCL wants to convene its AGM on 10th September 2023 by giving shorter notice which is consented by only 78% of members. Hence, shorter notice is not in compliance with the provisions of the Act

Q38. Lakshay and some of his friends are members of Focus Limited, a company with a paid-up share capital of Rs. 1 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 Lakshay 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 Lakshay and his friends need to keep in mind for moving a members' resolution. [RTP-May 24]

Ans. (i) 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/lOth 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."

Accordingly, Lakshay and his friends must hold minimum 1/lOth of paid-up share capital (i.e, Rs.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 Lakshay 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. Lakshay 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 Lakshay and his friends along with the requisition

Q39. 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?

[ICAI Study Mat]

Ans. 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 15 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 15 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.

Bonus Q. 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 Rs. 30 crores divided into 3 crores shares of Rs. 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. [ICAI Study Mat]

Ans. 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.

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.

Q40. Autumn and Spring Ltd. is a public limited company engaged in the business of manufacturing traditional designer garments for men and women for various festivities and occasions. The company was incorporated in the year 2023 and has a paid-up capital base of ` 200.56 crore and revaluation reserve of Rs 75.45 crore for the financial year 2023-24. Members holding share capital worth Rs 36.52 crore have jointly applied for calling of an extra-ordinary general meeting for transacting some urgent matters of special business. In this connection a requisition by the above members were validly presented to the board of directors on 01.07.2024. The Directors did not pay heed to the above request till 24.07.2024 hence the requisitionists decided to go ahead with calling the meeting by themselves.

The requisitionists provided a notice signed by only one of them being duly authorized by others, of the said meeting through an email, but did not attach an explanatory statement as required under the act towards the special business to be transacted although reasons for the same were
mentioned in the notice itself.

Sohan Lal, one of the shareholders who became member of the company on 10.07.2024 raised issue regarding the legality of the meeting as its notice was not mailed to him.

Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:

(i) Whether the above requisition by the members was adequate towards calling an extra-ordinary general meeting by the requisitionists themselves?

(ii) Whether signing on the notice by only one of the requisitionists and non-attachment of the explanatory statement as mandated under section 102 of the Act have any effect on the validity of the aforesaid notice? Further whether the contention of Sohan Lal not receiving the notice is correct? [PYQ-Sep 25]

Ans.

(i) As per the provision of section 100(2) of the Companies Act, 2013, in the case of a company having a share capital, the Board shall, at the requisition made by such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting, call an Extra Ordinary General Meeting (EGM) of the company within the specified period.

As per the provision of section 100(4), if the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

The requisition for calling of EGM was placed by members holding share capital worth Rs 36.52 crore, which is more than 1/10th of paid-up share capital of Autumn and Spring Limited, i.e. [(1/10th of Rs 200.56 crore)] = Rs 20.056 crore. Therefore, the required number of members have validly presented the requisition for calling of EGM on 1.7.2024. The Board of Directors must start the process of calling the EGM within 21 days from 1.7.2024

i.e. by 22.7.2024. Since, the directors did not pay heed to call the EGM by 24.7.2024, the requisitionists were correct in calling the EGM on their own.

(ii) Rule 17 of the Companies (Management and Administration) Rules, 2014 deals with the provisions relating to Calling of Extraordinary general meeting by requistionists.

As per sub rule (4) of the above Rule, the notice (if given by requisitionists) shall be signed by all the requistionists or by a requistionist duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
As per sub rule (5) of the above Rule, no explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

As per sub rule (6) of the above Rule, the notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the company a valid requisition for calling an extraordinary general meeting.
Hence, signing on the notice by only one requisitionist (duly authorised by all requisitionists via email) and non-attachment of the explanatory statement will not have any effect on the validity of the above notice.

Also, since Sohan Lal became a member of the company on 10.7.2024 and the requisition was presented to the Board on 1.7.2024, the contention of Sohan Lal raising the issue of legality of the meeting on the ground that the notice was not mailed to him, is not correct.

Q41. LKJ Ltd. is a company having paid up share capital of ` 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

[PYQ-May 24]

Ans. (i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.
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 to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.
In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.
Where quorum is not present in the adjourned meeting (i.e 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

Q42. Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming of world class cricketers. The foundation selects young boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently it is having 1200 members. The Annual General meeting of the company is usually held at the club cum registered office of the company at Jaipur.
The members in one of the general meetings have strongly suggested that the next Annual general meeting of the company be held at a hotel in near vicinity of the Registered office at Jaipur instead of the Club as the same has a congested sitting area. It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with facility of only physical voting and no E-Voting to be provided to the members.
Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:
(i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?
(ii) Whether a 15 days' prior notice is valid and as per the law?
(iii) Whether the decision to provide the facility of only physical voting and not E-Voting valid?

[PYQ-Jan 25]

Ans. (i) In the case of section 8 company, in pursuance of the second proviso to section 96(2) of the Companies Act, 2013, the time, date and place of each Annual General Meeting is required to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

Hence, the directors are bound to consider the directions regarding shifting of venue for the next Annual General Meeting.

Alternate Answer to Part (i)
As per the facts of the question, the members, in one of the general meetings, have strongly suggested that the next AGM of the company be held near the vicinity of the Registered Office at Jaipur instead of the club as the same has congested sitting area.

Since only suggestions have been given in one of the general meetings, the same cannot be construed as a compulsion on the part of the Board to act thereon. A mere suggestion will not tantamount to be a binding direction. In other words, a suggestion is just an idea or an opinion that someone proposes which need be compulsorily acted upon, while a direction is a set of instructions for where to go or what to do.
So, the suggestion by the shareholders is non-binding on the Board.

(ii) Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs dated 5th June, 2015 provides that section 8 company can hold a meeting with minimum of 14 days' notice as against 21 days' notice otherwise applicable under section 101 (1) of the Companies Act, 2013.
Hence, the director can validly issue a 15 days' notice being greater than 14 days as provided in the notification and the notice is as per the law.

(iii) Yes, as per the provision of section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, section 8 company, having a number of members of 1000 or more, is required to provide e- voting facility to its members at a general meeting. Hence, the decision of the foundation, to provide the facility of only physical voting and not E-voting, is not valid as section 8 Company is having 1200 members.

Q43. Fabulous Fabricators and Mechanics Ltd. is a listed public limited company incorporated in the year 2023 with the object to manufacture and engage in the construction of iron-ore based infrastructure for various industries on a contractual basis. The company is having a paid-up share capital of ₹200.30 crore divided in 865 members holding rights to vote in meeting.
The Annual General Meeting of the company was due to be held on 12.12.2023 at the registered office of the company in Raipur, Chhattisgarh. The Board of directors decided to provide the facility of E-Voting to its members in addition to other modes despite of the disagreement shown by Ms. Riddhi one of the directors who was of the view that in case of the above company, it was not mandatory to provide the facility of E-Voting.
On the day of the meeting Mr. Mohan, one of the members who had opted for E-Voting, could not exercise his option hence was physically present at the meeting to vote. The Chairman of the meeting did not allow him to physically cast his vote on the pretext that he had opted for E-Voting and now he cannot change his option and thus had to vote through E-Voting despite of being present.
Further a matter regarding appointment of Mr. Keshav as a small shareholders director was also to be discussed in the meeting therein, to which the legal team suggested that the same can only be undertaken by voting through postal ballot and not otherwise.
Referring to the provisions of the Companies Act, 2013, elaborate:

(i) Whether the contention of Ms. Riddhi was correct as to the provision of E-Voting facility being optional in case of Fabulous Fabricators and Mechanics Ltd.?
(ii) Can the Chairman stop Mr. Mohan to physically vote at the meeting?
(iii) Is the suggestion of the legal team regarding appointment of Mr. Keshav by voting through postal ballot valid at law? [PYQ-Sep 25]

Ans. (i) As per sub-rule (2) of Rule 20 of the Companies (Management and Administration) Rules, 2014, (w.e.f. 19.03.2015), every company which has listed its equity shares in a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
The conditions stated above are disjunctive, not cumulative.
Applying the above rule, since its shares are listed on stock exchange, Fabulous Fabricators and Mechanics Ltd. will have to mandatorily provide option of E-Voting to its members although it is having less than 1,000 members. Therefore, the contention of Ms. Riddhi was not correct.

(ii) As per sub-rule (4)(iii)(B) of Rule 20 of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting.
Also as per sub-rule (4)(xi), the Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, with the assistance of scrutinisers, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

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

(iii) As per section 110(1)(a) of the Companies Act, 2013, a company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot.
As per section 110(1)(b) a company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot.

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

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

Q44. Arch-Support Ltd. is a public limited company incorporated in 2018 having its registered office in Nashik, Maharashtra and engaged in the manufacture of sports shoes and related accessories. It has the following breakup of equity and preference share-capital:
1,20,000 Equity Shares of 100 each
1,50,000 10% Preference Shares of 10 each.
Ms. Martha, one of the elite members from Jaipur holds in her name equity shares worth ₹ 6,50,000 of the company as on date and also has beneficial interest in equity shares worth ₹ 3,00,000, is concerned about declaration to be made by her as mandated by the Companies (Significant Beneficial Owner) Amendment Rules, 2018 (SBO Rules).
She consulted CA. Ms. Marina, her friend on the above issue who advised that since she has significant beneficial ownership directly and indirectly in the company, she is required to file the declaration as mandated by the above rules.
Referring to the provisions of the Companies Act, 2013 and SBO Rules, decide on the following:
(i) Whether the advice given by CA. Ms. Marina, her friend on the above issue is in line with SBO Rules?
(ii) SBO Rules are applicable in every case. Comment and mention the instances if any, where these rules are not applicable. [PYQ-Sep 25]

Ans. (i) As per section 90(1) of the Companies Act, 2013, every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercise of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as 'significant beneficial owner'), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

As per Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018, 'Significant Beneficial Owner' means an individual referred to in sub-section (1) of section 90 of the Act, who, acting alone or together, or through one or more persons or trust, satisfies one or more of the following:
(i) holds, indirectly, or together with any direct holdings, not less than ten per cent of the shares of the reporting company;
(ii) holds, indirectly or together with any direct holdings, not less than ten per cent of the voting rights in the shares of the reporting company;
(iii) has right to receive or participate in not less than ten per cent of the total distributable dividend or any other distribution payable in a financial year, through indirect holdings alone or together with any direct holdings;
(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In the question given, Ms. Martha is holding equity shares amounting ₹ 6,50,000 in her name (directly) and amounting ₹ 3,00,000 (having beneficial interest). Thus, her total holding considering both direct and indirect holding of shares amounts to ₹ 9,50,000, which is less than the stipulated amount of 10% of (1,20,000 shares of ₹ 100 each)

i.e. 10% of Rs 1,20,00,000, i.e. ₹ 12,00,000. Therefore, she is not required to file the declaration as mentioned by CA. Ms. Marina.

(ii) Rule 8 of the Companies (Significant Beneficial Owner) Amendment Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the share of the Reporting Company is held by:
(a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
(b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
(c) the Central Government, State Government or any local authority;
(d) (i) a reporting company or (ii) a body corporate or (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);
(e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and
(f) investment vehicles regulated by Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Q45. New Pharma Ltd. issued a notice for holding its annual general meeting on 7th Sept. 2020. The notice was posted to the members on 16th August 2020. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide:

1. Whether meeting has been validly called ?
2. If there is a shortfall in the notice, state and explain by how many days does the notice fall short of the statutory requirements ?
3. Whether the length of serving of notices be curtailed by Article of Association? [PYQ-May 19]

Ans. As per to Sec. 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 48 hours after the letter containing the same is posted.

Present Case:

1. 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.
2. As explained in (i) above, notice falls short by 2 days.
3. 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.