

## PAPER – 2 : CORPORATE & OTHER LAW

Question No. 1 is compulsory.

Attempt any **three** questions from the remaining **four** questions.

### Question 1

(a) The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31<sup>st</sup> March, 2020 is as below:

- (1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each. There is no change in the paid-up share capital thereafter.
- (2) The turnover is ₹ 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

- (i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
- (ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement? **(6 Marks)**

(b) (i) The balances extracted from the financial statement of ABC Limited are as below:

Sr. No.	Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2020 (Provisional ₹ in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21. **(3 Marks)**

- (ii) ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22<sup>nd</sup> January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013? **(3 Marks)**
- (c) Paul (minor) purchased a smart phone on credit from a mobile dealer on the surety given by Mr. Jack, (a major). Paul did not pay for the mobile. The mobile dealer demanded the payment from Mr. Jack because the contract entered with Paul (minor) is void. Mr. Jack argued that he is not liable to pay the amount since Paul (Principal Debtor) is not liable. Whether the argument is correct under the Indian Contract Act, 1872?  
What will be your answer if Jack and Paul both are minor? **(4 Marks)**
- (d) A signs his name on a blank cheque with 'not negotiable crossing' which he gives to B with an authority to fill up a sum of ₹ 3,000 only. But B fills it for ₹ 5,000. B then endorsed it to C for a consideration of ₹ 5,000 who takes it in good faith. Examine whether C is entitled to recover the full amount of the instrument from B or A as per the provisions of the Negotiable Instruments Act, 1881. **(3 Marks)**

**Answer**

- (a) (i) According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-
- (A) paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (B) turnover as per profit and loss account for the immediately preceding financial year not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 totalling ₹ 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company.

Further, the paid up share capital (₹ 50 lakhs) and turnover (₹ 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited can be categorised as a small company.

- (ii) According to section 2 (40), Financial statement in relation to a company, includes—
- (a) a balance sheet as at the end of the financial year;
  - (b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  - (c) cash flow statement for the financial year;
  - (d) a statement of changes in equity, if applicable; and
  - (e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Smart Solutions Private Limited being a small company is exempted from filing a cash flow statement as a part of its financial statements. Thus, Smart Solutions Private Limited has not defaulted in filing its financial statements with ROC.

- (b) (i) According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

- (ii) Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22<sup>nd</sup> January, 2021). It is immaterial if Mr. A has received it on 5<sup>th</sup> February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the

company for failure to distribute the dividend within 30 days of declaration.

- (c) In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

In the given question, the contract is a valid contract and Jack (major) shall be liable to pay the amount even if Paul (Principal debtor) is not liable (as Paul is minor).

If both Jack and Paul are minors then the agreement of guarantee is void because the surety as well as the principal debtor are incompetent to contract.

- (d) As per section 130 of the Negotiable Instruments Act, 1881, a cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques i.e., they cannot be negotiated. The holder of such a cheque cannot acquire title better than that of the transferor.

In the given question, A gave to B the blank cheque with 'not negotiable crossing'. B had an authority to fill only a sum of ₹ 3,000 but he filled it up ₹ 5,000. This makes B's title defective. B then endorsed it to C for consideration of ₹ 5,000.

In the light of above stated facts and provision, C is not entitled to recover the full amount from A or B as C cannot acquire a title better than that of the transferor (B).

#### Question 2

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

- (i) *The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.*
- (ii) *The Registrar may, for any special reason, extend the time within which the first AGM shall be held.*
- (iii) *Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.*
- (iv) *There shall be a maximum interval of 15 months between two AGMs. (4 Marks)*

- (b) (i) *KSR Limited, an unlisted company furnishes the following data :*

- (a) *Paid-up share capital as on 31-3-2021 ₹ 45 Crore.*
- (b) *Turnover for the year ended 31-3-2021 ₹ 175 Crore*
- (c) *Outstanding loan from bank as on 3-3-2021 ₹ 105 crore (₹ 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 ₹ 90 crore after repayment.*

*Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022? (3 Marks)*

(ii) State the provisions of the Companies Act, 2013 relating to appointment of First Auditor of a Government Company. **(3 Marks)**

- (c) Mr. Stefen owns a chicken firm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar firm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his firm to Mr. Stefen for one year and received a deposit of ₹ 25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case. **(4 Marks)**

- (d) Mr. Harsha donated ₹ 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities.

He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881. **(3 Marks)**

### Answer

- (a) (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.

Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is **incorrect**.

- (ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is **incorrect**.

- (iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.

Hence, the given statement is **correct**.

- (iv) According to section 96, the gap between two annual general meetings should not exceed 15 months.

Hence, the given statement is **correct**, that there shall be a maximum interval of 15 months between two AGMs.

- (b) (i) According to the Companies (Accounts) Rules, 2014, every unlisted public company having-

- (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or  
 (B) turnover of 200 crore rupees or more during the preceding financial year; or  
 (C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or  
 (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., ₹ 105 crore on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

- (ii) According to section 139(7) of the Companies Act, 2013-

- (1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.  
 (2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.  
 (3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an Extra ordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

- (c) According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

**Duties of Mr. Stefen:** Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

**Right of Mr. Flemming:** Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged .

- (d) In the given instance, Mr. Harsha donated ₹ 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

### Question 3

- (a) *State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.*
- (i) *Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.*
- (ii) *Whether the Company may be wound up?*
- (iii) *Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?* **(5 Marks)**

- (b) *AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.* **(5 Marks)**
- (c) *Examine the following cases with respect to their validity. State your answer with reasons.*
- (i) *A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2021, if presented on 01-01-2021.*
- (ii) *A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto.* **(3 Marks)**
- (d) *Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.* **(3 Marks)**

**Answer**

- (a) (i) According to Section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- Hence, in the instant case, the Central Government can revoke the license given to State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
- However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)] Hence, the stated company may be wound up.

(iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)]

In the instant case, State Cricket Club cannot be merged with Cool Net Private Limited as the objects of both the companies are different and not similar.

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

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

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

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

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

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

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

Hence, in the instant case, the decision of X Ltd. to remove AB & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

(c) (i) The bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-1-2021, if presented on 01-01-2021: This statement is not valid as no days of grace are allowed in the case of bill payable on demand.

(ii) A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto:

As per section 93 of the Negotiable Instruments Act, 1881, notice of dishonor must be given by the holder to all parties other than the maker or the acceptor or the drawee whom the holder seeks to make liable. Accordingly, notice of dishonour to

the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

- (d) **Impact of the words "Means" and "Includes" in the 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 definition section.

**Example:**

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

**Question 4**

- (a) (i) *"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard. (3 Marks)*
- (ii) *ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013. (3 Marks)*
- (b) *The Promoters of Jayshree Spinning Mills Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the*

*provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid? (4 Marks)*

(c) *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". (4 Marks)*

(d) *Whether Foreign decisions can be used for construing Indian Statute? Explain. (3 Marks)*

**Answer**

(a) (i) According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

(ii) **Information Memorandum together with Shelf Prospectus is deemed Prospectus.** The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Section 31]

Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

- (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

No further prospectus is required for issue of securities. [Sub-section (1)]

Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is correct.

- (b) According to Rule 2 (1) (c) of the *Companies (Acceptance of Deposits) Rules, 2014*, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

- (a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
- (b) the loan is provided by the promoters themselves or by their relatives or by both; and
- (c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of Jayshree Spinning Mills Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of Jayshree Spinning Mills Limited will be regarded as deposit.

- (c) (i) **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.

- (ii) **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'.

- (d) **Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the

language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

**Question 5**

(a) *Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:*

- (i) *The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.*
- (ii) *The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.*
- (iii) *The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.* **(5 Marks)**

(b) *Johnson Limited goes for Public issue of its shares. The issue was over subscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.*

*State, who are the persons considered as officers in default under the Companies Act, 2013.*

*Examine who will be considered in default in the instant case?*

**(5 Marks)**

OR

*Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:*

- (i) *Whether he can inspect the minutes book and to have copies of the minutes at free of cost?*
  - (ii) *Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?*
- (c) *A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party. C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and*

*requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?*

**(4 Marks)**

- (d) *Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.*

**(3 Marks)**

**Answer**

- (a) Regarding the validity of Proposals w.r.t change of registered office by A Ltd. in the light of the section 12 of the Companies Act, 2013:**

- (i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

- (ii) Section 12 talks about shifting of Registered office only, In the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.

**[Note:** It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State.

In line section 12 (5) of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.]

- (iii) In the third case, change of registered office within the local limits of the same city.

Said proposal is valid in terms it has been passed under the authority of Board resolution.

- (b) As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who

is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
- (vi) every director, in respect of a contravention of any of the provisions of this Act,
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

**OR**

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes .

Accordingly, following are the answers:

- (i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.
- (ii) As provision does not specify anything on authorizing any one else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the

minutes book on behalf of him

- (c) As per section 200 of the Indian contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In the given instance, A rented his house to B on lease for 3 years. The lease agreement was terminable on three months' notice. C, son of A, gives notice of termination to B, without any authority, to vacate the house within a month. Also requested A to ratify his action.

Here by the act of C, the interest of B is affected, therefore the principle of ratification does not apply. Hence, it's not valid for A to ratify the action of C, thereby causing the notice to be binding on B.

- (d) The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Ajit was supposed to submit an appeal to High Court on 30<sup>th</sup> March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.