PAPER – 2: CORPORATE & OTHER LAW

*Question No. **1** is compulsory.*

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

Question 1

(a) *ABC Limited issued equity shares worth ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013-*

(i) *Whether ABC Limited is a subsidiary of MNP Limited?*

(ii) *Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023?* ***(5 Marks)***

(b) *The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was ₹ 200 crore divided into 20 crore equity shares of ₹ 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures–*

Particulars	*Amount (₹) crore*
Free reserves created out of profits	*200*
Securities Premium Account	*70*
Credit balance of Profit & Loss account	*60*
Reserves created out of revaluation of assets	*25*
Miscellaneous expenditure not written off	*20*

Turnover of the company during the financial year 2022-23 was ₹ 700 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013, with other adjustments as per CSR Rules was ₹ 4 crore.

The Board of Directors of the company consists of the following directors:

'CA. R.C Goel' as the Managing Director

'Rudra Mittal' and 'Pragya' as independent directors

'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors

Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013, and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of the following members:

'CA. R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

(I) The CSR projects for the benefit of employees of the company and their families only.

(II) A contribution of ₹ 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.

(III) A contribution to the PM CARES Fund during Covid pandemic.

(IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein answer the following questions:

(i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only ₹ 700 crore?

(ii) Advise the company, how many members are eligible to be part of Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules,2014?

(iii) Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? ***(6 Marks)***

(c) Mr. R extended a loan to Mr. D with X, Y, and Z as sureties. Each surety executed a bond with varying penalty amounts- X with a penalty of ₹ 10,000, Y with ₹ 20,000 and Z with ₹ 40,000, in the event of Mr. D's failure to repay the borrowed money to Mr. R. Examine the liabilities of the sureties in accordance with the provisions of the Indian Contract Act, 1872, when Mr. D defaults to the tune of ₹ 42,000. Additionally, assess the situation, if there is no contractual arrangement among the sureties. ***(4 Marks)***

(d) Calculate the date of maturity of the following bill of exchange explaining the relevant rules relating to determination of the date of maturity, as provided in the Negotiable Instruments Act, 1881.

(i) The bill of exchange drawn on 21/06/2023. Date of maturity of a bill payable 100 days after date.

(ii) A bill of exchange drawn on 20/04/2023 is payable twenty days after sight and the bill is presented for acceptance on 30/04/2023. ***(4 Marks)***

Answer

(a) This given question is based on section 2(87) read with section 19 of the Companies Act, 2013.

As per section 2(87) of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) 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.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where:

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee

(c) the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

Here, in the instant case, ABC Limited issued 10,000 equity shares on 1st April, 2023 whereby XYZ Limited & PQR Limited holds 3,500 & 2,500 shares respectively in ABC Limited. Considering 1 share = 1 vote, XYZ Limited and PQR Limited together holds 60% of the total voting power [i.e. more than one-half (50%)].

Further, MNP Limited controls the composition of Board of Directors of XYZ Limited and PQR Limited from 01.07.2023. In the light of section 2(87), MNP Limited is a holding company of XYZ Limited and PQR Limited (Subsidiary companies).

Following are the answers to the questions:

(i) ABC Limited shall be deemed to be a subsidiary company of the holding company (MNP Limited) as MNP Limited controls the composition of subsidiary companies XYZ Limited & PQR Limited as per explanation to section 2(87).

(ii) The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore:

1. ABC Limited cannot vote at AGM of MNP Limited held on 30th September, 2023.
2. XYZ Limited can vote at AGM of MNP Limited held on 30th September, 2023.

(b) (i) According to section 135 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:

"Net worth" [As per section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Particulars	Amount (₹ in crore)
Paid up share capital	200
Free Reserves created out of profits	200
Securities Premium Account	70

Credit balance of Profit & Loss account	60
Miscellaneous expenditure not written off	(20)
Net Worth	**510**

As the Net worth of the company is more than ₹ 510 crore (i.e more than ₹ 500 crore), hence the company has attracted the provisions of section 135 of the Companies Act, 2013.

(ii) The CSR Committee is constituted of CA. R. C. Goel (Managing Director), Varun (director), Prabodh (director) and Vineet (Chief Compliance Officer). The composition of the committee is not in compliance with section 135 of the Companies Act, 2013, as no independent director is the part of the committee. Further, Chief Compliance Officer has also been included which is not the requirement of the Act.

(iii)

List of activities	**Whether the activities are in accordance with the provisions of the Act**
(I) The CSR projects for the benefit of employees of the company and their family only	No
(II) A contribution of ₹ 50,000 to a political party	No
(III) Contribution to PM CARES Fund during Covid pandemic	Yes
(IV) Local activities like promotion of child and women education	Yes

(c) As per section 146 of the Indian Contract Act, 1872, when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Section 147 provides, the principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

In the given question, Mr. D makes a default of ₹ 42,000, and X, Y and Z as sureties have executed the bond with varying penalty amounts. Hence, X is liable to pay ₹ 10,000, and Y and Z ₹ 16,000 each.

In the given case, if there was no contractual arrangement among the sureties, they would be liable for equal contribution. Hence, X, Y and Z are liable to pay ₹ 14,000 each.

(d) According to section 22 of the Negotiable Instruments Act, 1881, the maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange (which is not expressed to be payable on demand, at sight or on presentment) is at maturity on the third day after the day on which it is expressed to be payable.

Section 25 provides, when the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day.

(i) As per section 24, in calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. A bill which is payable after sight is in the nature of time instrument.

Hence, in this case, the period of 100 days will start from 22nd June, 2023.

Month	No. of days in month to make 100 days
June	9
July	31
August	31
September	29

Thus, 100 days will end on 29th September, 2023. After 3 days of grace period are added to the bill of exchange, it falls due on 2nd October, 2023 which is a public holiday.

Accordingly, the date of maturity of the bill of exchange will fall due on 1st October, 2023 (i.e. the next preceding business day.)

(ii) In this case, the day on which the bill of exchange is presented for acceptance is to be taken into consideration i.e. 30th April, 2023. The period of 20 days will start from 1st May, 2023 and will end on 20th May, 2023. Being a time instrument payable after sight is allowed three days grace period as per section 22. Accordingly said bill will become mature, after 3 days of grace period to the due date, therefore, bill will be said to be matured on 23rd May, 2023.

Question 2

(a) Wills Private Limited convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the

belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face ***(4 Marks)***

(b) *PQR Private Limited operates as a manufacturing company, generating a turnover of 150 crore and holds an outstanding loan of ₹ 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of ₹ 110 crore, but ₹ 35 crore were repaid during the same year). The company's Board has delegated the authority to CEO to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Secretary of the company Mr. A as an internal auditor?* ***(6 Marks)***

(c) *While interpreting the statutes what will be the effect of 'Usage' or 'Customs and Practices'?* ***(3 Marks)***

(d) *Mr. Rama bought an electric watch of ₹ 50,000 from SN Watch Co. For the purpose of making payment, he drew a cheque payable to Mr. SN Dhawan, owner of the watch company or ordered. Mr. SN Dhawan put the cheque in office drawer. One of the employee Mr. Joseph stole the cheque from office drawer, forged the signature of Mr. Dhawan and indorsed it to Mr. Parashar for goods he bought from him of ₹ 50,000. Mr. Parashar encashed the cheque, on the very same day from Mr. Rama's account. After 3 days Mr. Dhawan came to know about the theft. He intimated Mr. Rama about the theft of the cheque. Examine the liability of the Mr. Rama in this case.* ***(4 Marks)***

Answer

(a) 1. According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

In the instant case, the idea of the directors that since the Annual General Meeting (AGM) was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

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

In the given situation, Wills Private Limited has contravened the provisions of section 92(4). Thus, the company and its every officer in default may face the penalties as specified in section 92(5) of the Act.

(b) **1.** According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having:

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) 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.

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

Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded ₹ 100 crore (irrespective of the fact that the outstanding loan during the year is ₹ 75 crore rupees).

Hence, the advice of CEO is not correct.

2. Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The internal auditor may or may not be an employee of the company.

Hence, the Board of Directors may appoint Mr. A, the Secretary of the company as an internal auditor.

(c) Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) '*Optima Legum interpres est consuetude*' (the custom is the best interpreter of the law); and

(ii) '*Contemporanea Expositio est optima et fortissinia in lege*' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/ construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/ written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea expositio* to interpret not only ancient but even recent statutes in India.

(d) According to section 85(1) of the Negotiable Instruments Act, 1881, where a cheque payable to order purports to be indorsed by or on behalf of the payee, the banker is discharged by payment in due course. The banker, in other words, can debit his customers account even though the indorsement by the payee might turn out to be forgery or the indorsement might have been placed by the payee's agent without his authority.

According to section 14 of the Negotiable Instruments Act, 1881, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated. Thus, there is a transfer of ownership of the instrument.

In the given case, the cheque is transferred to Mr. SN Dhawan by Mr. Rama whereby Mr. SN Dhawan becomes the holder in due course and the ownership of the cheque is transferred to him. The banker can debit Mr. Rama's account even though the indorsement by the payee is forged. Since, the account of Mr. Rama has already been debited, and ownership of the cheque towards payment of the purchase price of the electric watch was transferred to Mr. SN Dhawan he (Mr. Rama) does not have any further liability in this case.

Question 3

(a) A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. ***(5 Marks)***

(b) A clause that begins with the words 'notwithstanding anything contained' is a clause, that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them. ***(4 Marks)***

(c) Rajesh obtained a loan of ₹ 10 lakh from Mahesh. Following this, Rajesh appointed Mahesh as his agent to facilitate the sale of his land, granting him the authority to deduct the loan amount from the proceeds of the sale. Later on, Rajesh wants to withdraw or cancel this agency arrangement. Assess the lawfulness of Rajesh's decision to revoke

the above mentioned agency, taking into account the provisions of the Indian Contract Act, 1872. ***(4 Marks)***

(d) Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022- 23 as under:

(i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.

(ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013. ***(4 Marks)***

Answer

(a) According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company:

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

According section 8(9), if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of women to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the association and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is a restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of

section 8 of the Companies Act, 2013. Therefore, the proposal in its entirety is not feasible. The promoters will be accordingly advised that the proposal should be in conformity with the provisions of the Act.

(b) A clause that begins with the words 'notwithstanding anything contained' is called a *non-obstante* clause. Unlike the 'subject to' clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (*K. Parasurammaiah Vs. Pakari Lakshman AIR 1965 AP 220)*

A notwithstanding clause can operate at four levels.

S. No.	Clause	Effect
1.	Notwithstanding any thing contained in another section or sub- section of that statute.	The clause will override such other section(s) / sub-section(s)
2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.
3.	Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will prevail over the other enactment.
4.	Notwithstanding anything contained in any other law for the time being in force.	The clause will override all other laws.

(c) According to section 202 of the Indian Contract Act, 1872, an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies.

Thus, when Rajesh appointed Mahesh as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Mahesh and the said agency is not revocable. The revocation of agency by Rajesh is not lawful.

Alternate Answer

Revocation of authority under the Indian Contract Act, 1872: An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given

to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent. [Section 206]

Hence, Rajesh can revoke his authority delegated to Mahesh if he (Mahesh) has not exercised any authority towards mentioned agency and no obligation arises out of it.

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

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

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

In the instant case,

(i) Sunshine Limited, an unlisted company, can hold its AGM on 28th September, 2023 which happens to be a holiday declared by U.P. Government because this is not a national holiday.

(ii) Sunshine Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 38 members out of 40 has given their consent for conducting the meeting in Lonavala.

Question 4

(a) RNL Ltd. issued a post-dated cheque of ₹ 5.50 Lakh to Mr. YR Gupta on account of full and final settlement of its liability for shares purchased of a renowned company. Company draws the cheque on 21.8.2023 and mentioned the cheque to be paid on 26.9.2023.

Further, Company instructed the bank, on which cheque was drawn to stop the payment of cheque, if at the time of presentment, Bank account has insufficient funds to make payment. Mr. YR Gupta presented the cheque to bank for payment on 30.11.2023. On 30.11.2023 bank account maintained by company was having only ₹ 4.90 lakh. Bank denied for payment.

The cheque was dishonored for non-payment. In the above case, who will be responsible for dishonor of cheque and payment of ₹ 5.50 lakh due to Mr. YR Gupta? ***(4 Marks)***

(b) *Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.* ***(4 Marks)***

(c) *WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of ₹ 25 crore. According to financial results of the company as on 31.3.2022 net worth of the company was ₹ 120 crore and turnover for the year 2021-22 was ₹ 350 crore. The company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of ₹ 1.5 crore from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty four months. Company in its books of account, records the receipt as a loan under non- current liabilities. At the time of advancing loan, Mr. Seth affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.*

On the basis of above facts answer the following questions:

(i) *Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?*

(ii) *With reference to the loan advanced by Mr. Seth to company, state whether the same is to be classified as a deposit or not?* ***(4 Marks)***

(d) *Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of ₹ 1,000 crore. According to financial statements as on 31st March, 2023, paid-up capital of company was ₹ 600 crore and free reserves were ₹ 650 crore. 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.*

MCL is planning to expand its existence throughout the country. For this purpose, company has taken ₹ 200 crore term loan and ₹ 125 crore of working capital loan from Banks on 18thJune, 2023. Charge was created on all the assets of company on that day for above loan of ₹ 325 crore, 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 MCL 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.

MCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22ndAugust, 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 the 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 the Companies Act, 2013?

(iii) Whether the notice given to convene AGM at shorter notice was in compliance of the Companies Act, 2013? ***(5 Marks)***

Answer

(a) Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is returned/ informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

According to section 139 of the Act, when a cheque is dishonoured, it shall be presumed, unless the contrary is proved, that a holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

As per the facts stated in the question, RNL Limited (drawer) after having issued the cheque to Mr. YR Gupta (drawee), instructed the bank to stop payment of cheque, if at the time of presentment, Bank account of company has insufficient funds to make payment. In the given case, on presentment of cheque by Mr. YR Gupta, Bank denied payment and the cheque was dishonored.

In view of the facts of the question and the provisions of law, RNL Limited has committed an offence under section 138. Also, section 140 specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act.

Accordingly, RNL Limited will be responsible for dishonor of cheque and payment of ₹ 5.50 lakh due to Mr. YR Gupta.

(b) As per section 2(87) of the Companies Act, 2013, Subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company -

(i) controls the composition of the Board of Directors; or

(ii) 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:

Taking into account the above provision, X Limited, Y Limited and Z Limited are the subsidiary companies of Moon Pharma Limited.

Regarding the question, Mr. Avinash who is a Whole Time Director (KMP) in Moon Pharma Limited, wants to get appointed as Whole Time Director in X Limited and Y Limited.

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.

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.

Hence, Mr. Avinash can hold office of Whole Time Director also in X Limited and Y Limited.

(c) **(i)** As per Rule 2(1)(e) Companies (Acceptance of Deposits) Rules, 2014, the term 'eligible company' means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly,

- It should be a public company.
- It should have net worth of minimum ₹ 100 crore or a turnover of minimum ₹ 500 crore.
- It has obtained the prior consent by means of a special resolution passed in general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the net worth of WEE Remedies Limited is ₹ 120 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

The tenure for the proposed deposits dated 1st November 2022 which would be due for repayment on 30th September, 2027, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In terms of Rule 2(1)(c)(viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, the said deposits by Mr. Seth shall not be treated as deposit.

(d) (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, Majboot Cement Limited (MCL) can keep the Registers of Members at Faridabad (as around 15% of total members are resident of Faridabad) by passing a Special Resolution at a 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.

In the instant case, since charge was created on all the assets of company on that date (i.e. on 18th June, 2023) for loan of ₹ 325 crore, it is type of Floating Charge.

As per section 77 of the Companies Act, 2013, if the registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within 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 within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed *ad valorem* fees.

In the instant case, MCL 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 (within 60 days from 18th June, 2023) with additional fees, the application can be filed within a further period of sixty 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 notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, 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, MCL wants to convene its AGM on 10th September, 2023 by giving shorter notice which is consented by only 78% of the members. Hence, shorter notice is not in compliance with the provisions of the Act.

Question 5

(a) *The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ ₹100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31st July, 2022. Instead, during this interim period, the company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company.* ***(5 Marks)***

OR

(a) *What are the requirements outlined in the Companies Act, 2013 regarding the appointment of a 'Debenture Trustee' by a company? Can the following entities be designated as a 'Debenture Trustee':*

(i) An investor who holds advantageous stake.

(ii) A lender to whom the company has a debt of only ₹1,000.

(iii) *An individual who has provided a guarantee for the repayment of the debenture amount issued by the company.* ***(5 Marks)***

(b) *Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:*

(i) *'Ms. Rekha', a practicing Chartered Accountant, and 'Mr. Alok', who is the spouse of 'Ms. Rekha', holds securities of 'Charcoal Ltd.' valued at a face value amount of ₹ 85,000 (with a market value of ₹ 75,000). The directors of Charcoal Ltd. are considering the appointment of 'Ms. Rekha' as an auditor for the company.*

(ii) *'Mr. Puri', a practicing Chartered Accountant, has a debt of ₹ 7 lakh owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of 'Mr. Puri' as an auditor for the company.*

(iii) *'Ms. Komal', the real sister of 'Mr. Sharad', a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of 'Mr. Sharad' as an auditor for the company.* ***(6 Marks)***

(c) *Define the concept of 'Doctrine of Noscitur a Sociis' with example in accordance with the provisions of the Interpretation of Statutes.* ***(3 Marks)***

(d) *Both a sub-agent and a substituted agent are appointed by the agent. But, however, there are some points of distinction between the two. Explain any three points.* ***(3 Marks)***

Answer

(a) As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under private placement shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

It is provided that the monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:

(1) for adjustment against allotment of securities; or

(2) for the repayment of monies where the company is unable to allot securities.

In the instant case, application money from the members was received on 15th April, 2022 and company did not make an allotment of shares till 31st July, 2022 i.e. after expiry of the period of 60 days. Hence, the company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

Therefore, the objection raised by the members for non- allotment of shares/ non-refund of share application money within the statutory time limit is valid. However, their claim to pay interest @ 15% is not valid.

Also, the application money cannot be used for the payment of dividends by the company.

OR

(a) **Appointment of Debenture Trustee:** As per section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, provides that no person shall be appointed as a debenture trustee, if he:

(i) beneficially holds shares in the company;

(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Thus, based on the above provisions answers to the given questions are as follows:

(i) An investor who holds advantageous stake cannot be appointed as a debenture trustee.

(ii) A lender to whom company has a debt of only ₹ 1000 cannot be appointed as a debenture trustee. The amount here is immaterial.

(iii) An individual who has provided a guarantee for repayment of debenture amount issued by the company also cannot be appointed as a debenture trustee.

(b) **(i)** As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Alok (spouse of Ms. Rekha, the auditor), is having securities of Charcoal Limited having face value of ₹ 85,000, which is within the limit as per requirement of under the proviso to section 141(3)(d)(i). Therefore, Ms. Rekha will be eligible to be appointed as an auditor of Charcoal Limited.

(ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 lakh. In the instant case, Mr. Puri will be disqualified to be appointed as an auditor of RAI Limited as he is indebted to RAI Limited for ₹ 7 lakh.

(iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Ms. Komal, real sister of Mr. Sharad (Chartered Accountant) is the CFO (a KMP) of Biotech Limited, hence Mr. Sharad will be disqualified to be appointed as an auditor in the said company.

(c) ***Noscitur a Sociis*** means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is the meaning of the more general word being restricted to a sense analogous to that of the less general.

Examples of the principal of Noscitur a Sociis are as follows:

Fresh orange juice is not a fruit juice.

While dealing with a Purchase Tax Act, which used the expression 'manufactured beverages including fruit-juices and bottled waters and syrups'.

It was held that the description 'fruit juices' as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (*Commissioners. Vs. Savoy Hotel, (1966) 2 All. E.R. 299*)

Private Dispensary of a doctor is not a commercial establishment

In dealing with the definition of commercial establishment in section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, 'commercial establishment means an establishment which carries on any business, trade or profession', the word 'profession' was construed with the associated words 'business' and 'trade' and it was held that a

private dispensary of a doctor was not within the definition. (*Dr. Devendra M. Surti Vs. State of Gujrat, A.I.R. 1969 SC 63*)

(d) Following are the points of distinction between a sub-agent and a substituted agent:

S. No	Sub Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him.
5.	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.