

**MOCK TEST PAPER 1**  
**INTERMEDIATE (NEW): GROUP – I**  
**PAPER – 2: CORPORATE AND OTHER LAWS**

*Division A is compulsory*

*In Division B, Question No.1 is compulsory*

*Attempt any **Three** questions out of the remaining **Four** questions*

**Time Allowed – 3 Hours**

**Maximum Marks – 100**

**Division A (30 Marks)**

1. Vishal Crockery Limited was incorporated on 24<sup>th</sup> September, 2010 under the jurisdiction of Registrar of Companies, Rajasthan with its registered office located in Jaipur and its manufacturing units spread out in Mumbai, Kanpur, Delhi and Ludhiana. Under the dynamic leadership of Hans Rajpal, the Chairman and Managing Director (CMD) of the company, it could easily be ascertained that the company had reached the new heights of success. The directors of the company numbered eight including CMD of which two were the independent directors.

The turnover of the company for the Financial Year 2018-2019 was Rs. 750.00crores – a whopping rise of more than 20% from the previous year and net profit stood at a prestigious figure of Rs. 6.60crores – also increased by Rs. 1.80 crores compared to the net profit of previous year. The company had a net worth of Rs. 250.00 crores; and it was noticed that the net worth had also registered a northern trend by more than 15%. The authorised and paid-up share capital of the company was Rs. 8.00 crores. Keeping in view the applicability of forming a CSR Committee for the current financial year 2019-20, a CSR Committee was formed with four directors as members of which one was the independent member. The Committee was, among others, given the responsibility to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous to shift its registered office to Mumbai from the present one at Jaipur which will help the company in easing out the new business. Another strategically important segment which the company tapped earlier and now wishes to engage itself on a large scale relates to manufacturing of stationery items.

The company hopes that with the shifting of registered office to Mumbai, it shall be able to target international markets to export its quality products. As on date, the export turnover of the company is not that much significant. The directors, Janardan Mittal (Finance) and Ratish Jain (Marketing), however, have in-depth knowledge of export markets, particularly those existing in UK and Singapore, where they can place their products successfully and achieve laurels for the company in terms of wealth maximisation.

During the current Financial Year 2019-20, the company under the CSR activities provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana. Not only this, the company contributed towards establishment of Digital Smart Classroom, Libraries and computer labs in these cities. The company also deployed mobile medical units equipped with medical facilities and qualified doctors. In addition to this, a large number of public health and sanitation activities had been initiated under Swachh Bharat Abhiyan. The total amount spent on these activities was, till date, almost equal to the minimum spendable amount and it is hoped

that as the current Financial Year 2019-20 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure.

**Multiple Choice Questions (2 Marks each \* 3= Total 6 Marks)**

- (A) Which of the following criterion prompted Vishal Crockery Limited to mandatorily form a Corporate Social Responsibility (CSR) Committee for the current financial year?
- (i) The net profit had increased to Rs. 6.60crores and it was more by Rs. 1.80 crores in comparison to previous year's net profit.
  - (ii) The turnover was Rs. 750.00 crores which was increased by more than 20% as compared to the previous year.
  - (iii) The net worth was Rs. 250.00 crores which when compared to the previous year had registered an increase by more than 15%.
  - (iv) The paid-up share capital was Rs. 8.00 crores.
- (B) What is the minimum amount (in percentage form) that Vishal Crockery Limited is required to spend during the Financial Year 2019-20 on the CSR activities after it formed a Corporate Social Responsibility Committee.
- (i) Minimum 2% of the average net profits made during the two immediately preceding financial years.
  - (ii) Minimum 2% of the average net profitsmade during the three immediately preceding financial years.
  - (iii) Minimum 2.5% of the average net profitsmade during the two immediately preceding financial years.
  - (iv) Minimum 2.5% of the average net profits made during the three immediately preceding financial years.
- (C) In the given case scenario, Vishal Crockery Limited decided to undertake CSR activities at its own. In case, it had decided to engage an external Section 8 company for undertaking its CSR activities and such charitable company is not established by Vishal nor it is established by the Central/State Government or by any entity established under an Act of Parliament or a State Legislature, then what should be the established track which this Section 8 company should have in undertaking similar programs or projects which Vishal Crockery Limited wants it to accomplish?
- (i) Track record of minimum one year
  - (ii) Track record of minimum two years
  - (iii) Track record of minimum three years
  - (iv) None of the above
2. Vivek Shah is the Chief Finance Officer (CFO) and Sachin Bhatt is the Company Secretary of Jitendra Iron Works Private Ltd (JIWPL), in Manipal, Karnataka. JIWPL is an integrated set up of foundries and machine shops that add value by machining more than 75% of the castings manufactured to fully finished condition. JIWPL is one of the largest jobbing foundries producing grey iron castings required for automobile, farm equipment sector and diesel engines industry. JIWPL serves customers globally. The turnover of JIWPL is about Rs. 600 Crores, including export turnover of about Rs. 250 Crores.

During the year 2019, JIWPL planned expansion to enhance its production capacity to meet the increasing demand from its customers, by importing fully automatic plant and equipment from Germany for the unit at Manipal. The means of finance of the expansion project:-

- (a) JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter director of JIWPL, Mahesh Shetty. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of Deposits.
- (b) The Board and the CFO also approached the main banker of the company viz., Bank of Baroda. The Bank after proper credit analysis, sanctioned an amount of Rs. 50 Crores for meeting the working capital needs of the expansion project, which included interchangeable limits of cash credit, foreign and inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, inventory and other current assets of the expansion project in Manipal of JIWPL.

The CFO and the CS together coordinated with the legal department of the Bank on procedures relating to creation of security and registration of charges.

The registered office of JIWPL is located in Manipal. Out of the company's 180 members, 20 members, who are entered in the Register of Members reside in Mangaluru, a nearby city, requested the company for some reasons to maintain the Register of Members in the company's liaison office in Mangaluru, instead of Manipal henceforth.

**Multiple Choice Questions (2 Marks each\*3= Total 6 Marks)**

- (A) JIWPL received an amount of Rs 25 Crores from Malini Shetty, wife of one of the promoter directors Mahesh Shetty of JIWPL. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of deposits. The CS has to ensure -:
  - (i) That the particulars of amount received are immediately entered in the register of deposits maintained in such manner and in such format as prescribed;
  - (ii) To issue immediately a circular to the members of the company with a statement of deposits accepted as on date with the names of each depositor, amount(s) received as on date, the due date(s) and the liability(ies) on the due date(s) in respect of each depositor
  - (iii) That a declaration is to be obtained to the effect that the amount given is not sourced from borrowed funds or accepting loans or deposits from others and disclose the details in the Board's Report;
  - (iv) To file the particulars of deposits received within 30 days from the date of its receipt with the Registrar.
  
- (B) JIWPL was also sanctioned an additional amount of Rs. 50 Crores for meeting the working capital needs of the expansion project., which included interchangeable limits of cash credit, foreign and Inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, Inventory and other current assets of the expansion project of JIWPL. A floating Charge, in general is created by way of :
  - (i) Passing a board resolution
  - (ii) Signing and acknowledging the Credit Sanction letter
  - (iii) Mortgage
  - (iv) Hypothecation or lien.
  
- (C) The registered office of JIWPL is located in Manipal. Out of the company's 180 Members, 20 members, who are entered in the register of members (ROM) reside in Mangaluru, a nearby city. These members requested the company for some reasons to maintain the Register of members (ROM) in the company's liaison office in Mangaluru, instead of Manipal henceforth.
  - (i) The ROM shall be maintained only at the registered office in Manipal and maintaining in a place other than the registered office is not permitted under the Companies Act 2013 and the relevant Rules there under.

- (ii) By passing a Special Resolution in a General Meeting, the ROM can be maintained in Mangaluru.
- (iii) The Board of Directors by passing a Board Resolution in one of its meetings, may direct the Company Secretary to maintain the ROM in Mangaluru.
- (iv) If more than 1/3rd of the members, whose names are entered in the ROM request for the change, then only the ROM can be maintained at Mangaluru after passing a Special Resolution in a General Meeting.
3. For appointing an auditor other than the retiring auditor,
- Special notice is required.
  - Ordinary notice is required.
  - Neither ordinary nor special notice is required.
  - Approval of Central Government is required. **(1 Mark)**
4. Which one of the following requires ordinary resolution?
- to change the name of the company
  - to alter the articles of association
  - to reduce the share capital
  - to declare dividends. **(1 Mark)**
5. Swastik Private Limited passed a Special Resolution to change its name to Swastik Darshan Private Limited on 30<sup>th</sup> May, 2019. Relevant MCA filing was done on due time and then Company got its new stationery printed on 1<sup>st</sup> July, 2019. However there was a delay in issue of Certificate and Company received new certificate on 20<sup>th</sup> August, 2019 which was issued on 10<sup>th</sup> August, 2019. Company wants to enter into a lease agreement for new premise. When they can do such agreement in new name of the Company?
- 30<sup>th</sup> May, 2019
  - 1<sup>st</sup> July, 2019
  - 20<sup>th</sup> August, 2019
  - 10<sup>th</sup> August, 2019 **(1 Mark)**
6. Extra Limited is a growing Company and requires additional funds for expansion from time to time. They are following the same process for making an offer to public and then issue those shares. This is very time and energy consuming for them. Kindly advise them if there is any way out.
- During first offer they shall file prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
  - During first offer they shall file prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
  - During first offer they shall file shelf prospectus with a validity on one year, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required;
  - During first offer they shall file shelf prospectus with a validity on two years, so subsequent offer issued during the period of validity of that prospectus, no further prospectus is required. **(1 Mark)**
7. Which of the following is not an Immovable Property?
- Land

- (b) Building
- (c) Timber
- (d) Machinery permanently attached to the land **(1 Mark)**
8. As per the Negotiable Instruments Act, 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the.....
- (a) said public holiday
- (b) 5 days succeeding public holiday
- (c) next succeeding business day
- (d) next preceding business day **(1 Mark)**
9. Rule of Beneficial construction is also known as—
- (a) Purposive construction
- (b) Mischieve Rule
- (c) Heydons's Rule
- (d) All of the Above **(1 Mark)**
10. Formal legal document which creates or confirms a right or record a fact is a—
- (a) Document
- (b) Deed
- (c) Statute
- (d) Instrument **(1 Mark)**
11. A negotiable instrument drawn in favor of a minor is
- (a) Void
- (b) void but enforceable
- (c) Valid
- (d) none of the above **(1 Mark)**
12. The preamble is most important in any legislation, it:
- (a) Provides definitions in the Act.
- (b) Expresses scope, object and purpose of the Act.
- (c) Provides summary of the entire Act.
- (d) None of the above. **(1 Mark)**
13. In Roopali Marketing Company Private Limited (Authorised capital 50,000 shares of Rs. 10 each and paid-up share capital of Rs. 4,50,000), 1000 shares are jointly held by Abeer and Abheek; another 800 shares are jointly held by Seema and Srividya; and another 1200 are jointly held by Ramesh, Raksha and Rajneesh. Further, 42,000 shares are held by 193 individual persons in their individual capacity. Is it possible for the company to induct more persons?
- (a) The company is unable to induct more persons since it already has two hundred individual members.
- (b) The company can induct four more persons as members.

- (c) The company can induct another 20 persons (i.e. 10% of two hundred individual members) after seeking permission from the concerned ROC.
- (d) If the company does not want to seek permission of the concerned ROC, it can induct only 10 more persons (i.e. 5% of two hundred individual members). **(2 Marks)**
14. Atul contracts to indemnify Neha against the consequences of any proceedings which Chirag may take against Neha in respect of a sum of Rs. 15000/- advanced by Chirag to Neha. Now, Neha who is called upon to pay the sum of money to Chirag but she fails to do so. Now, as per the provisions of the Indian Contract Act, 1872, advise the future course of action to be taken by Chirag.
- (a) Chirag can recover the amount only from Neha
- (b) Chirag can recover the full amount from Atul
- (c) Chirag cannot recover the amount from Atul
- (d) Chirag can recover at least 10% of the total amount from Neha **(2 Marks)**
15. Mr. Vishal parks his car at a parking lot, locks it, and keeps the keys with himself. Which of the following statement is correct in this regard?
- (a) This is a case of bailment
- (b) The parking people has possession of the car of Mr. Vishal
- (c) The parking people has custody of car of Mr. Vishal
- (d) This is the case of mortgage **(2 Marks)**
16. M drew a cheque amounting to Rs. 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. State the nature of the Instrument as amounting to endorsement under the Negotiable Instrument Act, 1881.
- (a) Yes its an endorsement, as P becomes the holder of the cheque that he found in the N's safe locker.
- (b) No, its not an endorsement, as P does not become the holder of the cheque
- (c) Yes, its an endorsement, as P was a ultimate custodian of the cheque
- (d) No, its not an endorsement, as N endorsed it to C and not to the P. **(2 Marks)**

#### **Division B (70 Marks)**

1. (a) Aptech Technology Limited (listed on Stock Exchange) was incorporated on 1<sup>st</sup> October, 2019 with a paid- up share capital of Rs. 200 crores. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old? **(6 Marks)**
- (b) Cadila Ltd. incurred loss in business upto current quarter of financial year 2018-19. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediately preceding three years. In spite of the loss, the Board of Directors of the company have decided to

declare interim dividend @ 15% for the current financial year. Examine the decision of Cadila Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

**(6 Marks)**

(c) Explaining the provisions of the Indian Contract Act, 1872, answer the following:

(i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

(ii) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability? **(4 Marks)**

(d) Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted in reference to the Negotiable Instruments Act, 1881. **(3 Marks)**

2. (a) ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March, 2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? **(6 Marks)**

(b) Examine the validity of the following decision of the Board of Directors with reference of the provisions of the Companies Act, 2013:

In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10<sup>th</sup> of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll. **(4 Marks)**

(c) Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? **(4 Marks)**

(d) What are the circumstances under which a bill of exchange can be dishonored by non-acceptance? Also, explain the consequences if a cheque gets dishonored for insufficiency of funds in the account. **(3 Marks)**

3. (a) Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra

Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. **(5 Marks)**

(b) Examine the following situations in the light of the Companies Act, 2013:

(i) Mr. A, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September 2019, in which he accepted the assignment. Subsequently, in January 2020 he joined as a partner in the consultancy firm where Mr. B is also a partner. Mr. B is also working as a Finance Executive of X Ltd.

(ii) "Mr. Vivek", a practicing Chartered Accountant, is holding securities of Data Ltd. having face value of Rs. 1000/-. Whether Mr. Vivek is qualified for appointment as an Auditor of Data Ltd.? **(5 Marks)**

(c) Mr. V draws a cheque of Rs. 11,000 and gives to Mr. B by way of gift. State with reason whether-

(i) Mr. B is a holder in due course as per the Negotiable Instrument Act, 1881?

(ii) Mr. B is entitled to receive the amount of Rs. 11,000 from the bank? **(4 Marks)**

(d) 'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'. **(3 Marks)**

4. (a) The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan. **(6 Marks)**

(b) Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the *Companies (Acceptance of Deposits) Rules, 2014*, as amended from time to time.

(i) Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.

(ii) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time? **(4 Marks)**

(c) Komal Ltd. declares a dividend for its shareholders in its Annual General Meeting held on 27<sup>th</sup> September, 2019. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

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

(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? **(4 Marks)**

(d) How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means, (ii) Includes

Give one illustration for each of the above from statutes you are familiar with. **(3 Marks)**

5. (a) Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. **(5 Marks)**
- (b) Briefly explain the provisions enforced by the Companies (Amendment) Act, 2019 when a charge created before 02-11-2018 [before the commencement of Companies (Amendment) Act, 2019] is not registered within the prescribed period of thirty days as provided in Section 77 (1) of the Companies Act, 2013. **(5 Marks)**
- (c) Comment on the following 'Principal is not always bound by the acts of a sub-agent'. **(4 Marks)**
- (d) What is the meaning of service by post as per provisions of the General Clauses Act, 1897? **(3 Marks)**

**MOCK TEST PAPER 1**  
**INTERMEDIATE (NEW): GROUP – I**  
**PAPER – 2: CORPORATE AND OTHER LAWS**

**ANSWERS/HINTS**

**DIVISION A**

1. (A) (i)  
(B) (ii)  
(C) (iii)
2. (A) (iii)  
(B) (iv)  
(C) (ii)
3. (a)
4. (d)
5. (d)
6. (c)
7. (c)
8. (d)
9. (d)
10. (d)
11. (c)
12. (b)
13. (b)
14. (b)
15. (c)
16. (b)

**Division B**

1. (a) **Sweat equity shares of a class of shares already issued.**

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are

issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders.

Aptech Technology Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

- (b) **Interim Dividend:** According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by Cadila Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e.  $(12+15+18)/3 = 45/3 = 15\%$ ]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

- (c) (i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.
- (ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.
- (d) The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Umesh. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the promissory note.
2. (a) In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto under section 134(3), shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

- (i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full-time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.
  - (ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.
- (b) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (ii) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Hence, the contention of the Chairman is not valid.

- (c) Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when Mrs.A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

- (d) As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.

**Dishonour by non-acceptance may take place in any one of the following circumstances:**

- (i) When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
- (ii) When one of several drawees, not being partners, makes default in acceptance;

- (iii) When the drawee makes a qualified acceptance;
- (iv) When presentment for acceptance is excused and the bill remains unaccepted; and
- (v) When the drawee is incompetent to contract.

**Dishonour of Cheque for insufficiency, etc. of funds in the account:** As per section 138 of the Negotiable Instruments Act 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

3. (a) Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Alok will have no remedy against the company.

**Circumstances when an expert is not liable:** An expert will not be liable for any mis-statements in the prospectus under the following situations:

- (i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
  - (ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
  - (iii) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.
- (b) (i) **Provisions and Explanation:** Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

**Conclusion:** In the present case, Mr. A, an auditor of X Ltd., joined as partner with consultancy firm where Mr. B is also a partner and Mr. B is also the Finance executive of X Ltd. Hence, Mr. A has attracted clause (3)(c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

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

In the present case, Mr. Vivekis holding security of Rs.1000 in the Data Ltd, therefore, he is not eligible for appointment as an auditor of Data Ltd.

(c) According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-

- any person
- who for consideration
- becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof,(if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the instant case, Mr. V draws a cheque of Rs. 11,000 and gives to Mr. B by way of gift.

- (i) Mr. B is holder but not a holder in due course since he did not get the cheque for value and consideration.
- (ii) Mr. B's title is good and bonafide. As a holder, he is entitled to receive Rs. 11,000 from the bank on whom the cheque is drawn.

(d) **Associated Words to be Understood in Common Sense Manner:** When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of '*Noscitur A Sociis*' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of *ejusdem generis*, rather *ejusdem generis* is only an application of the *noscitur a sociis*. It must be borne in mind that *noscitur a sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (*Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67*).

4. (a) **Doctrine of Indoor Management:** According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.

- (b) (i) 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, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of Rs. 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

- (ii) According to section 73 (1) of the Companies Act, 2013, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (*contains provisions regarding acceptance of deposits by companies*) for acceptance or renewal of deposits from public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, *inter-alia*, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance or renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

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

- (i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of

Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days, 27/09/2019 will be excluded and last 30<sup>th</sup> day, i.e. 27/10/2019 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).

(ii) **Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28<sup>th</sup> October, 2019 to 3<sup>rd</sup> November, 2019 (both days inclusive).

(d) **Interpretation 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.

5. (a) According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (*Barton v. North Staffordshire Railway Co.*).

In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

(b) As per Section 77 (1) of the Companies Act, 2013 every company creating a charge:

- a. within or outside India,
- b. on its property or assets or any of its undertakings,
- c. whether tangible or otherwise, and
- d. situated in or outside India,

is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018[before the commencement of Companies (Amendment) Act, 2019] and it was not registered within the prescribed period of thirty days of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.

According to clause (a) of the Second Proviso to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

(c) The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "*delegates non potest delegare*"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

(d) **"Meaning of Service by post" [Section 27 of the General Clauses Act, 1897]:** Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

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

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.