

**MOCK TEST PAPER 1**  
**INTERMEDIATE: 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. Ramola Textiles is a listed public company with the share capital of ten crores. The share value of the share is ₹ 100/share. The company has maintained the following registers:

(a) Register of Members indicating separately for each class of equity and preference shares held by each member residing in or outside India

(b) Register of Debenture-holder

The company has a registered office in Ahmedabad (Gujarat) and its Corporate office is situated in Mumbai. Around 17% of members who are equity share holders and 10% of the members who are preferential shareholders resides in Jaipur (Rajasthan). So out of these members 9% equity share holders and 5% preferential share holder made an application addressed to the company to shift its register of members to its liaison office in Jaipur. The company refused the request of the members by quoting that the register can only be maintained at registered office of the company.

Mr. Raheem, a shareholder of the company, wants to sell all his shares in the company and wants to settle abroad. Mr. Raheem sold his equity shares to Mr. Ram on 7<sup>th</sup> May 2021. After completing all the formalities of transfer of shares Mr. Raheem left India on 10<sup>th</sup> May 2021. After three days span Mr. Ram figured out that his name was still not registered in company Register of Members (ROM). The Annual General Meeting was scheduled to be held on 25<sup>th</sup> May 2021. So, Mr. Ram wrote an e-mail to the company regarding addition of his name in ROM. But finally, after no response from the company, Mr. Ram approached the Tribunal to get his name registered in ROM. The Tribunal passed the order on 20<sup>th</sup> May 2021 to enter Mr. Ram's name in register of members of the company.

In the Annual General Meeting (AGM) the company declared to pay 10% dividend to all its shareholders out of the profits which it earned in previous financial year. Mr. Krish, a member of the company is holding 1000 equity shares in the company. Two years back Mr. Krish jointly bought fully paid 1000 equity shares of the company, with Mr. Azim, who is also a member of the company holding 1000 equity shares. Mr Krish needs to pay final call of ₹ 20 per share.

After the Annual General Meeting a report on the meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder is required to be filed. A copy of the report was filed with the Registrar in Form No. MGT-15 with prescribed fees.

**Multiple Choice Questions [3 MCQs of 2 Marks each: Total 6 Marks]**

(i) The Tribunal passed an order dated 20.05.2021. Latest by what date should the entry of Mr. Ram's name be made in the register of members?

(a) 25.05.2021

(b) 27.05.2021

(c) 30.05.2021

- (d) 31.05.2021
- (ii) Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.
- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
- (b) No, the signing is not in order as only the Chairman is authorised to sign the report
- (c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
- (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.
- (iii) According to the provision of Companies Act, 2013, till what date the company should submit report of AGM to the registrar?
- (a) 04.06.2021
- (b) 09.06.2021
- (c) 24.06.2021
- (d) 25.06.2021
2. Atul want to wear a new coat for his seminar which is to be held (after 15 days). He bought cloth material from the market to make a new coat. Atul gives material to Babu, a tailor, to make the coat. Babu promised Atul to deliver the coat within the stipulated time of one week. Atul paid 10% advance so that he stitches his coat on priority basis. After one week when Atul went to the tailor he was shocked to see that the coat is still unstitched. The tailor demanded two more days time from Atul to stitch the coat, but Atul refused and asked the tailor to return his piece of cloth. Tailor retained the cloth and asked Atul to pay the price, as he already did the cutting of the cloth.

Yash, Atul's friend left his car at the company's authorised showroom for servicing. As Yash house is located in the remote area of the city, so he instructed the manager of the showroom to park the vehicle at Atul's residence. So as per Yash's instructions the car was sent to Atul house after servicing. The worker of the showroom parked the car outside Atul's residence and handed over the key to Atul's servant. Next day when Yash went to pick up his car he found that somebody has hit the car while it was parked there.

Yash found a mobile phone and a branded pen lying on the road outside Atul's residence. Yash tried to enquire about the real owner. He took the phone and pen with him and kept it in the drawer of his study table. Next day, Yash's wife came to the room searching for a pen, she saw the pen and took the pen and went out. Unfortunately, Yash's wife lost the pen. After two days the real owner, approached him (Yash), Yash humbly delivered his phone and apologized for the loss of pen.

**Multiple Choice Questions [2 MCQs of 2 Marks each: Total 4 Marks]**

- (i) According to the provisions of the Indian Contract Act, 1872, do you think the tailor has a right of lien over the cloth?
- (a) Yes, he is entitled to retain the coat until he is paid.
- (b) No, he has not completed the work within the agreed time

- (c) Yes, in case of particular lien he can retain the cloth.
- (d) No, but he is not required to return the advance amount
- (ii) Referring to the provision of the Indian Contract Act, 1872, what are the repercussions, when Yash found goods belonging to another and takes them into his custody? Choose the correct statement.
- (a) He becomes subjected to the same responsibility as of a bailee.
- (b) merely possession of the goods does not make him a bailee
- (c) No act is done by owner for placing the goods in the possession of Yash, so he cannot be treated as bailee.
- (d) In the absence of any express or implied contract, absolves Yash's liabilities as bailee
3. A prospectus which does not include complete particulars of the quantum or price of the securities included therein is called:
- (a) A deemed Prospectus
- (b) A Shelf Prospectus
- (c) An Abridged Prospectus
- (d) A Red Herring Prospectus **(1 Mark)**
4. The minimum amount of subscription in a public issue shall be received within \_\_\_\_ days from the date of issue of prospectus.
- (a) 30
- (b) 60
- (c) 90
- (d) 120 **(1 Mark)**
5. During the half year ended September 2020, the board of directors (BOD) of Gold Leaf Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2018. Further during the year ended March 2021, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2020. You are required to state the validity of the acts of the Board of directors.
- (a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
- (b) The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
- (c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
- (d) The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2021. The application made for revision in the Board report is however valid in law. **(2 Marks)**
6. One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:
- (a) 30 days of the date of meeting in which it was adopted.
- (b) 90 days of the date of meeting in which it was adopted.

- (c) 90 days from the closure of the financial year.
- (d) 180 days from the closure of the financial year. **(2 Marks)**
7. The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2021 but the company has incurred loss during the current financial year up to the end of June, 2021. However, it is noted that during the previous five financial years i.e., 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.
- (a) Maximum at the rate of 10%.
- (b) Maximum at the rate of 11%.
- (c) Maximum at the rate of 10.5%.
- (d) Maximum at the rate of 11.5%. **(2 Marks)**
8. Amount to be transferred to reserves out of profits before any declaration of dividend is \_\_\_\_\_
- (a) 5%
- (b) 7.5%
- (c) 10%
- (d) at the discretion of the company. **(1 Mark)**
9. For appointing an auditor other than the retiring auditor,
- (a) Special notice is required.
- (b) Ordinary notice is required.
- (c) Neither ordinary nor special notice is required
- (d) Approval of Central Government is required. **(1 Mark)**
10. Which of the following is a prohibited service to be rendered by the auditor of the Company?
- (a) Design and implementation of any financial information system
- (b) Making report to the members of the company on the accounts examined by him
- (c) Compliance with the auditing standards
- (d) Reporting of fraud against the company by officers or employees to the Central Government **(1 Mark)**
11. Which of the following statements is not true?
- (a) in case of shares, the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.
- (b) underwriting commission should not be more than the rate specified by the Article of Association.
- (c) in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.
- (d) amount of commission may be paid out of profits of the company. **(2 Marks)**

12. A negotiable instrument drawn in favour of a minor is
- (a) Void ab initio
  - (b) Void but enforceable
  - (c) Valid
  - (d) Quasi contract **(1 Mark)**
13. According to the \_\_\_\_\_ rule, the words of the statute are to be given their plain and ordinary meaning. —
- (a) Literal rule
  - (b) Golden rule
  - (c) Natural rule
  - (d) Mischief rule **(1 Mark)**
14. When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable:
- (a) Welfare construction
  - (b) Strict construction
  - (c) Harmonious construction
  - (d) Mischief Rule **(1 Mark)**
15. As per the provisions of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under:
- (a) Under either or any of those enactments
  - (b) Twice for the same offence
  - (c) Either (a) or (b) as per the discretion of the court
  - (d) Under the cumulative effect of both the enactments **(1 Mark)**
16. Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which :
- (a) It receives the assent of the President
  - (b) It receives the assent of the Governor General
  - (c) It receives assent of both the houses of Parliament
  - (d) It receives assent of the Prime Minister **(1 Mark)**
17. The date of maturity of a bill payable hundred days after sight and which is presented for sight on 4th May, 2021, is:
- (a) 13 August, 2021
  - (b) 14 August, 2021
  - (c) 15 August, 2021
  - (d) 16 August, 2021 **(2 Marks)**

### Division B (70 Marks)

1. (a) Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2021:

		₹
(1)	Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?  
(ii) What if company decide to give bonus shares in the ratio of 1:2? ? **(6 Marks)**
- (b) The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20<sup>th</sup> September, 2020. Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him? **(3 Marks)**
- (c) Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of ₹1,20,000 (face value ₹ 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd. **(3 Marks)**
- (d) Y advances Z a loan of ₹ 10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of X. Z becomes insolvent. Can Y sue X for recovery of amount? **(4 Marks)**
- (e) Rama executes a promissory note in the following form, 'I promise to pay a sum of ₹10,000 after three months'. Decide whether the promissory note is a valid promissory note. **(3 Marks)**
2. (a) Best Limited has decided to conduct its Annual General Meeting on 28<sup>th</sup> September 2021. They have sent the notice of the meeting on 9<sup>th</sup> September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013. **(4 Marks)**
- (b) (i) The Auditor of the company (other than government company) has resigned on 31<sup>st</sup> December, 2020, while the Financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case. **(3 Marks)**
- (ii) State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013. **(3 Marks)**
- (c) Mr. D was in urgent need of money amounting to ₹ 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability? **(4 Marks)**
- (d) What are the essential characteristics of Negotiable Instruments. **(3 Marks)**

3. (a) What is meant by “Abridged Prospectus”? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form?  
(5 Marks)
- (b) Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013. Explain?  
(5 Marks)
- (c) Discuss with reasons, in the following given conditions, whether ‘M’ can be called as a “holder” under the Negotiable Instruments Act, 1881:
- (1) ‘M’ the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.  
(2) ‘M’ the agent of ‘Q’ is entrusted with an instrument without endorsement by ‘Q’ who is the payee.  
(4 Marks)
- (d) Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.  
(3 Marks)
4. (a) The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain.  
(6 Marks)
- (b) Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:
- (i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.  
(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.  
(4 Marks)
- (c) SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14<sup>th</sup> August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations?  
(3 Marks)
- (d) Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?  
(4 Marks)
5. (a) New Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 70 lakh and turnover of ₹ 30 crores. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:
- (i) Whether the New Private Ltd. can avail the status of small company?  
(ii) What will be your answer if the turnover of the company is ₹ 15 crore and the capital is same as ₹ 70 lakh?  
(5 Marks)
- (b) Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act, 2013 read with the ‘Acceptance of Deposits’ Rules, 2014.  
(5 Marks)
- (c) On the basis of reward, what are various categories of bailment?  
(4 Marks)
- (d) Explain the meaning of ‘calculation of duty to be taken on pro rata basis’ as per the provisions of the General Clauses Act, 1897. Give an example.  
(3 Marks)

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

**Division A**

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

**Division B**

1. (a) **Issue of bonus shares:** As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
  - (i) its free reserves;
  - (ii) the securities premium account; or
  - (iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e.,  $\frac{1}{3} \times 30.00$  lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.
  - (ii) In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e.,  $\frac{1}{2} \times 30.00$  lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.
- (b) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

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

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 [as prescribed under the *Company (Audit and Auditors) Rules, 2014*].

In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

- (d) According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Accordingly, Y cannot sue X, because a surety (X) is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor (Z), no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.

- (e) The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

2. (a) Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of at least 21 clear days', before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.

Generally, 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 ninety-five per cent. of the members entitled to vote thereat

In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e. less than 95% members). Hence, such meeting can not be said to be validity called.

- (b) (i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under section 139 (8)(i) of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (ii) **Persons responsible to maintain books:** As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:
- (a) Managing Director,
  - (b) Whole-Time Director, in charge of finance
  - (c) Chief Financial Officer
  - (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
- (c) **Co-sureties liable to contribute equally** (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that “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”.
- Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.
- (d) **Essential Characteristics of Negotiable Instruments**
1. It is necessarily in writing.
  2. It should be signed.
  3. It is freely transferable from one person to another.
  4. Holder’s title is free from defects.
  5. It can be transferred any number of times till its satisfaction.
  6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
  7. The sum payable, the time of payment, the payee, must be certain.
  8. The instrument should be delivered. Mere drawing of instrument does not create liability.

3. (a) (1) **Meaning of Abridged Prospectus:** - According to Section 2(1) of the Companies Act, 2018, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(2) **Circumstances under which the abridged prospectus need not accompany the application forms:** Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus.

In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

(i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or

(ii) Where the securities are not offered to the public.

(b) According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

(c) **Person to be called as a holder:** As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases-

(1) 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

(2) No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

(d) **Dictionary Definitions:** First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer

to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in *pari materia* will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

#### 4. (a) Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire 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.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

(b) Rule 2 (1) (c) of the *Companies (Acceptance of Deposit) Rules, 2014* states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹ 1,50,000.

(c) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Hence, in the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

(d) **Grammatical Interpretation and its exceptions:** 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

(i) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the

legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

- (ii) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

5. (a) **Small Company:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.

- (1) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 70 lakh and having turnover of ₹ 30 crore. Since, only one criteria of share capital not exceeding ₹ 2 crores is met, but the second criteria of turnover not exceeding ₹ 20 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, New Private Ltd. cannot avail the status of small company.
- (2) If the turnover of the company is ₹ 15 crore, then both the criteria will be fulfilled and New Private Ltd. can avail the status of small company.

(b) In this respect following provisions are required to be observed as mentioned in Rule 7 of the *Companies (Acceptance of Deposits) Rules, 2014*:

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

- (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
- (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (c) has any material pecuniary relationship with the company;
- (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
- (e) is related to any person specified in clause (a) above.

(c) **On the basis of reward, bailment can be classified into two types:**

- (i) **Gratuitous Bailment:** The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.

- (ii) **Non-Gratuitous Bailment:** Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee
- (d) **“Duty to be taken pro rata in enactments”:** According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.