**FOUNDATION COURSE**

**PAPER – 2: BUSINESS LAW**

*Attempt **all** the questions.*
*Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer.*
*Working Notes should form part of the answer.*

**Time Allowed: 35 Minutes** **Maximum Marks: 20**

**Question – 1:**
Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of Rs. 25,00,000 in name of the company.
The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd.refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? ***(6 Marks)***

**Answer:**
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 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,

(i) What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
(ii) 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, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

**Question – 2:**
BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is Rs. 30 Lakhs (3 Lakhs equity shares of Rs. 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? ***(5 Marks)***

**Answer:**
Provisions of the Act:
Section 2(87) defines "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:

For the purposes of this section —
(i) a company shall be deemed to be a subsidiary company of the holding company even if the **control** referred to in sub-clause (i) or sub-clause (ii) **is of another subsidiary company of the holding company;**
(ii) "**layer**" in relation to a holding company means **its subsidiary or subsidiaries.**

Analysis and Conclusion:
1. In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is **more than one half in nominal value of the Equity Share Capital** of PQ Private Limited.

   Hence, **PQ Private Limited is subsidiary of BC Private Limited.**

2. In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, **KL Private Limited is holding company of PQ Private Company** and **BC Private Limited is a holding company of KL Private Limited.**

   Hence, by virtue of Chain relationship, **BC Private Limited becomes the holding company of PQ Private Limited.**

**Question 3:**
In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:
(i) Is Flower Fans Private Limited no longer in existence?
(ii) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? ***(3 Marks)***

**Answer:**
(i) Perpetual Succession:
A company on incorporation becomes a **separate legal entity**. It is an **artificial legal person** and have **perpetual succession** which means even if all the members of a company die, the company still continues to exist. **It has permanent existence.**

The existence of a company is **independent of the lives of its members.** It has a perpetual succession. In this problem, the company will continue as a legal entity. The **company's existence is in no way affected by the death of all its members.**

(ii) The statement given is incorrect.
A company is an artificial person as it is created by a process other than natural birth. It is **legal or judicial** as it is created by law. It is a person since it is clothed with **all the rights of an individual.** Further, the company being a separate legal entity **can own property, have banking account, raise loans, incur liabilities and enter into contracts**. Even members can contract with company, acquire right against it or incur liability to it. **It can sue and be sued in its own name.** It can do everything which any natural person can do **except be sent to jail, take an oath, marry or practice a learned profession**. Hence, it is a legal person in its own sense.

**Question 4:**
A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute

dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company kept a general meeting by giving only 14 days' notice. Is this valid?

***(2 Marks)***

**Answer:**

A company registered under Section 8 of the Companies Act, 2013 is **prohibited from the payment of any dividends to its members.**

Hence in the given case, the contention of the members to distribute dividend from the profits earned is **wrong.**

Also, Section 8 company is **allowed to call a general meeting by giving 14 days** instead of 21 days.

**Question - 5:**

Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

(i) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(ii) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

**Answer:**

(i) Yes, it is **mandatory** for Navita **to withdraw her nomination** in the said OPC as she is leaving India permanently as only a **natural person** who is an **Indian citizen** and **resident in India** shall be a nominee in OPC.

(ii) Yes, **Navita can continue her nomination** in the said OPC, if she maintained the status of Resident of India after her marriage by **staying in India for a period of not less than 120 days** during the immediately preceding financial year.