

MOCK TEST PAPER 2
INTERMEDIATE: GROUP – I
PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

Division A

1. (a)
2. (d)
3. (d)
4. (c)
5. (b)
6. (b)
7. (c)
8. (c)
9. (a)
10. (d)
11. (a)
12. (b)
13. (b)
14. (d)
15. (d)
16. (d)
17. (a)
18. (b)
19. (c)
20. (c)
21. (b)
22. (b)
23. (c)

Division B

Answer 1

- (a) (i) According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-
- (A) paid-up share capital not exceeding four crore rupees; and
 - (B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees:

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

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

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

Further, the paid up share capital (₹ 50 lakh) and turnover (₹ 2 crore) is within the limit as prescribed under section 2(85), hence, Pacific Solutions Private Limited can be categorised as a small company.

(ii) According to section 2 (40), Financial statement in relation to a company, includes—

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

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

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

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

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2022 to 31.3.2023). Hence, Swastik Limited is not required to constitute Corporate Social Responsibility Committee in the financial year 2023-24.

- (ii) Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.

In the given question, the dividend was declared on 31.07.2023 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd August, 2023). It is immaterial if Mr. A has received it on 5th September 2023 (i.e., post 30 days from 31.07.2023). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

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

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

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

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

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

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

Answer 2

- (a) (i) **Joint shareholders must concur in voting unless the articles provide to the contrary.**

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the *Companies (Management and Administration) Rules, 2014*, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in chronological order in the register of members/ shareholders shall be entitled to vote.

- (ii) **Time period for e-voting:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the Annual General Meeting is going to be held on 7th September 2023, the facility for remote e-voting shall open on 4th September 2023 and close at 5.00 p.m. on 6th September 2023.

- (b) (i) Rule 17 of the *Companies (Management and Administration) Rules, 2014* provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

- (ii) According to section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

- (c) According to section 178 of the Indian Contract Act, 1872, where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.

It is also to be noted that:

1. The possession of goods must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, a valid pledge cannot be effected.
2. The pledgee should have no notice of the pledger's defect of title. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.

- (i) In the given question, Vikrant had no notice of the Govind's defect of title. He acted in ordinary course of business of a mercantile agent considering Govind as owner of the good and genuinely handed over the proceed of the sale to him. Therefore, said transaction is invalid.

Thus, Govind shall be liable to indemnify Vikrant for his payment to Madhav.

- (ii) Govind shall not be liable to indemnify Vikrant as selling of prohibited drugs is a prohibited act and against the public policy.

- (d) According to section 49 of the Negotiable Instruments Act, 1881, the holder of a negotiable instrument indorsed in blank may—

- without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an endorser.

According to section 55, if a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the endorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

As per the facts of the question and above mentioned provisions of the Negotiable Instruments Act, 1881, D as the bearer of the Bill of Exchange, is entitled to receive payment or to sue drawer, acceptor, or A who indorsed the bill in blank, but he cannot sue B or C.

Answer 3

- (a) (i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Hence, in the instant case, the Central Government can revoke the license given to Country Pool Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)]. Hence, the stated company may be wound up.

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

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

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

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

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

Hence, in the instant case, the decision of X Limited to remove VM & Associates, auditors of the company at the general meeting held on 25th May 2023, is not valid. The approval of the Central Government shall be taken before passing the special resolution in the general meeting.

- (c) (i) **Drawer:** The maker of a bill of exchange.
- (ii) **Drawee:** The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill.
- (iii) **Payee:** The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.
- (d) **Impact of the words “Means” and “Includes” in the definitions-** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to '**mean**' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to '**include**' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

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

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

Answer 4

- (a) **Directors' Responsibility Statement:** According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—
- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 - (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

- (b) Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the *Companies (Share Capital and Debentures) Rules, 2014*, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules *inter-alia*, no person shall be appointed as a debenture trustee, if he-

- (1) beneficially holds shares in the company;
- (2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

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

- (i) A shareholder who has holds shares of ` 10,000, cannot be appointed as a debenture trustee.
- (ii) A creditor whom company owes ` 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

- (c) Financial Year:** According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April, but Calendar Year starts from first day of January.

- (d) (i) **Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.
- (ii) **Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Answer 5

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

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

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

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

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

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

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

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

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

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

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

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

In the question, Shree was supposed to submit an appeal to High Court on 8th September 2023, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over Delhi.

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