

**PAPER – 2: CORPORATE AND OTHER LAWS**

**PART – I: ANNOUNCEMENTS STATING APPLICABILITY  
FOR MAY, 2018 EXAMINATIONS**

**Applicability for May, 2018 examinations**

The Study Material (July 2017 edition) is applicable for May, 2018 Examinations. It is updated for all relevant amendments/circulars/notifications/clarifications etc. till 30<sup>th</sup> April, 2017. Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1<sup>st</sup> May 2017 to 31<sup>st</sup> October, 2017 are mentioned below:

<b>Relevant Legislative amendments from 1<sup>st</sup> of May 2017 to 31<sup>st</sup> of October 2017</b>				
<b>The Companies Act, 2013/ Corporate Laws</b>				
<b>Sl. No.</b>	<b>Amendments related to</b>	<b>Relevant Amendments</b>	<b>Page no. of the Study material (New study material) with reference of relevant provisions</b>	<b>Earlier Law</b>
1.	Enforcement of the Companies (Acceptance of Deposits) Amendment Rules, 2017 Vide Notification G.S.R. 454 (E) dated 11 <sup>th</sup> May, 2017 in exercise of powers conferred by section 73 and 73 read with 469(1) and 469(2).	In the Companies (Acceptance of Deposits) Rules, 2014,  In rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words “Domestic Venture Capital Funds” the words “Infrastructure Investment Trusts” shall be inserted.	Pg. 5.4	(xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.
2.	Exemptions to Government Companies Vide Notification G.S.R.	The Central Government amends the Notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015,	Pg 7.51	Such other place as the Central Government may approve in this behalf.

	582(E) Dated 13 <sup>th</sup> June, 2017	<p>whereby Exceptions, Modifications and Adaptations were provided in case of Government companies. Following is the amendments:</p> <p>In sub-section (2) of section 96, for the words "such other place as the Central Government may approve in this behalf", the words "such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf" shall be substituted."</p>		
		<p>Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5<sup>th</sup> June 2015:</p> <p>The aforesaid exceptions, modifications and adaptations (i.e. as given in Notification G.S.R. 463(E), dated 5th June 2015 and Notification G.S.R. 582(E) Dated 13th June, 2017) shall be applicable to a Government company which has not committed a default in filing of its financial statements under section 137 of the Companies Act or annual return under section 92 of the said Act with the Registrar.</p>		
3.	Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13 <sup>TH</sup> June, 2017	The Central Government amends the Notification G.S.R. 464(E), dated 5 <sup>th</sup> June 2015		

	<p>whereby Exceptions, Modifications and Adaptations were provided in case of Private companies. Following are the amendments:</p> <p>(1) In Chapter I, Clause (40) of section 2.</p> <p>For the proviso, the following shall be substituted, namely:- Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;</p> <p>Explanation. - For the purposes of this Act, the term „start-up“ or “start-up company” means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of</p>	<p>Pg 1.9</p>	<p>(1) Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement</p>
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		<p>Industrial Policy and Promotion, Ministry of Commerce and Industry.</p> <p>(2) In Chapter V, clauses (a) to (e) of sub-section (2) of section 73, shall not apply to a private company-</p> <p>(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or</p> <p>(B) which is a start-up, for five years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:-</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(b) if the borrowings of such a company from banks or financial institutions or any</p>	Pg 5.6	<p>(2) Clause (a) to (e) of Section 73 provides conditions for acceptance of deposits from members.</p> <p>Notification dated 5th June, 2015, provided that Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p>
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		<p>body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:</p> <p>Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.</p> <p>(3) In Chapter VII, clause (g) of sub-section (1) of section 92, shall apply to private companies which are small companies, namely:-</p> <p>“(g) aggregate amount of remuneration drawn by directors;”</p> <p>(4) In Chapter VII, proviso to sub-section (1) of section 92,</p>	<p>Pg 7.11</p> <p>Pg 7.12</p>	<p>(3) clause (g) of sub-section (1) of section 92 is read as “remuneration of directors and key managerial personnel”</p> <p>(4) However, in relation to One Person Company and small company,</p>
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		<p>For the proviso, the following proviso shall be substituted, namely:-</p> <p>“Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”.</p> <p>(5) Section 143(3)(i), shall not apply to a private company:-</p> <p>(i) which is a one person company or a small company; or  (ii) which has turnover less than rupees fifty crores as per latest audited financial <b>statement or*</b> which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore.”</p>	<p>Pg.10.24</p>	<p>the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.</p> <p>(5) Section 143(3)(i) provides- whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;</p>
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		<p>Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5<sup>th</sup> June 2015:</p> <p>The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.</p>		
*4.	<p>Corrigendum vide Notification S.O. 2218(E) dated 13<sup>th</sup> July 2017 with respect to the Notification G.S.R. 583(E) Dated 13<sup>TH</sup> June, 2017</p>	<p>Ministry of Corporate Affairs vide corrigendum stated that for the words “statement or” to read as “statement and” under section 143(3)(i).</p>	<p>Referred in point no. 3 above</p>	<p>In Section 143(3)(i)(ii) there were the words “statement or” which has been replaced with the word “statement and” through this notification.</p>
5.	<p>Enforcement of the Companies (Audit and Auditors) Second Amendment Rules, 2017 Vide Notification G.S.R. 621(E) dated 22<sup>nd</sup> June 2017 in exercise of powers conferred by section 139.</p>	<p>The Central Government hereby amends the Companies (Audit and Auditors) Rules, 2014.</p> <p>Through this amendment rule, in Rule 5(b), for the word “twenty”, the word “fifty” shall be substituted.</p>	<p>Pg 10.6</p>	<p>Earlier Rule 5(b) stated that -all private limited companies having paid up share capital of rupees 20 crore or more;</p>
6.	<p>Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25<sup>th</sup> July 2017</p>	<p>Notification No. G.S.R. 583(E) dated 13th June, 2017 stated that requirements of reporting under section 143(3)(i) read Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013</p>	<p>-</p>	<p>For the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its</p>

		shall not apply to certain private companies. Through issue of this circular, it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.		operating effectiveness:  Provided that auditor of a company may voluntarily include the statement referred to in this rule for the financial year commencing on or after 1st April, 2014 and ending on or before 31st March, 2015.
7.	Enforcement of the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 Vide Notification G.S.R. 1172(E) dated 19 <sup>th</sup> September, 2017 in exercise of powers conferred by section 73 and 73 read with 469(1) and 469(2).	In the Companies (Acceptance of Deposits) Rules, 2014, in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-  "Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the	Pg 5.8	Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.



		<p>Registrar in Form DPT-3.</p> <p>Explanation.—For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006:</p> <p>Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—</p>		
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		<p>(i) a private company which is a start-up, for five years from the date of its incorporation;</p> <p>(ii) a private company which fulfils all of the following conditions, namely:—</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:</p> <p>Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.”.</p>		
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8.	Vide notification S.O. 3086(E) dated 20 <sup>th</sup> September 2017	The Central Government hereby appoints the 20 <sup>th</sup> September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.	Pg 1.20	Earlier not notified
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**PART – II : QUESTIONS AND ANSWERS**

**QUESTIONS**

**COMPANY LAW**

**The Companies Act, 2013**

1. The paid-up share capital of Saras Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?
2. In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?
3. Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?
4. The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

- (i) 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?
- (ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?
5. Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (₹ In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

- (i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
- (ii) State the composition of the CSR committee unlisted company and a private company.
6. Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed?
7. Altar 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. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and 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?
8. (a) A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Discuss can he do so?

- (b) Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?
9. Kapoor Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.
10. Explain how the auditor will be appointed in the following cases:
- (i) A Government Company within the meaning of section 394 of the Companies Act, 2013.
- (ii) The Auditor of the company (other than government company) has resigned on 31<sup>st</sup> December, 2016, while the Financial year of the company ends on 31<sup>st</sup> March, 2017.

#### **OTHER LAWS**

##### **The Indian Contract Act, 1872**

11. (a) R instructed S, a transporter, to send a consignment of apples to Chennai. After covering half the distance, Suresh found that the apples will perish before reaching Chennai. He sold the same at half the market price. R sued S. Decide will he succeed?
- (b) Ramesh hires a carriage of Suresh and agrees to pay ₹ 1500 as hire charges. The carriage is unsafe, though Suresh is unaware of it. Ramesh is injured and claims compensation for injuries suffered by him. Suresh refuses to pay. Discuss the liability of Suresh.
12. Mr. A of Delhi engaged Mr. S as his agent to buy a house in Noida Extension area. Mr. S bought a house for ₹ 50 lakhs in the name of a nominee and then purchased it himself for ₹ 60 lakhs. He then sold the same house to Mr. A for ₹ 80 lakhs. Mr. A later comes to know the mischief of Mr. S and tries to recover the excess amount paid to Mr. S. Discuss whether he is entitled to recover any amount from Mr. S? If so, how much?

##### **The Negotiable Instruments Act, 1881**

13. 'E' is the holder of a bill of exchange made payable to the order of 'F'. The bill of exchange contains the following endorsements in blank:
- First endorsement 'F'
- Second endorsement 'G'.
- Third endorsement 'H' and

Fourth endorsement 'I'

'E' strikes out, without I's consent, the endorsements by 'G' and 'H'. Decide with reasons whether 'E' is entitled to recover anything from 'I' under the provisions of Negotiable Instruments Act, 1881.

**The General Clauses Act, 1897**

14. A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

**Interpretation of Statutes, Deeds and Documents**

15. Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

**SUGGESTED ANSWERS/HINTS**

1. In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", 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 share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

- (a) 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;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

2. Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
- (i) is or could reasonably be regarded as defamatory of any person;
  - (ii) is irrelevant or immaterial to the proceeding; or
  - (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

3. The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

4. (i) 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.

- (ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20<sup>th</sup> May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20<sup>th</sup> September 2017, so, Mr. Raj will be entitled to the dividend.

5. Section 135 read with *Companies (Corporate Social Responsibility Policy) Rules, 2014* of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

- (i) **Amount that Company has to spend towards CSR:** According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

- (ii) **Composition of CSR Committee:** The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

6. In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid-up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

- (a) Free reserves or  
(b) Security Premium account or



(c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

7. In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

- (1) The Chairperson of the company where he is authorized by the Board; or
- (2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
- (3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto 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, 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.

8. (a) The non disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made. Hence, in the given case the allottee can avoid the contract of allotment of shares.

(b) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct

9. Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above Rules are as under:
- (a) The payment of such commission shall be authorized in the company's articles of association;
  - (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
  - (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

10. (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

- (ii) 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 AGM in case of a company other government company. Under section 139 (8)(i) 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 thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
11. (a) An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.
- A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence. In the given case S had acted in an emergency situation and hence, R will not succeed against him.
- (b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.
12. The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:
- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.
- Therefore, based on the above provisions, Mr. A is entitled to recover ₹ 30 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction.
13. According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, E is the holder of a bill of exchange of which F is the payee and it contains the following endorsement in blank:

First endorsement, 'F'

Second endorsement, 'G'

Third endorsement, 'H'

Fourth endorsement, 'I'

'E', the holder, may intentionally strike out the endorsement by 'G' and 'H'; in that case the liability of 'G' and 'H' upon the bill will come to an end. But if the endorsements of 'G' and 'H' are struck out without the consent of 'I', 'E' will not be entitled to recover anything from 'I'. The reason being that as between 'H' and 'I', 'H' is the principal debtor and 'I' is surety. If 'H' is released by the holder under Section 39 of the Act, 'I', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if 'E' strikes out, without I's consent, the endorsements by 'G' and 'H', 'I' will also be discharged.

14. As per the provisions of 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:

1. properly addressing,
2. pre-paying, and
3. 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.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181*: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

15. **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is

expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

**Distinction between Proviso, exception and saving Clause**

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing