ANSWERS OF MODEL TEST PAPER 3

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART I CASE SCENARIO BASED MCQS

1. **(c)**
2. **(b)**
3. **(a)**
4. **(c)**
5. **(c)**
6. **(b)**
7. **(c)**
8. **(b)**
9. **(a)**
10. **(b)**
11. **(a)**
12. **(c)**
13. **(b)**
14. **(b)**
15. **(a)**

ANSWER TO PART II DESCRIPTIVE QUESTIONS

1. (a) Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.

First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.

Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.

Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Third – Where the holders of not less than10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to

have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

(i) In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.

Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.

(ii) Total number of dissenting shareholders= 50,000- 40,000= 10,000.

Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal= 10% of 50,000=5,000.

In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

(b) 1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and

b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

(c) According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

(i) In the given question, Mr. L will be treated as a person resident outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. in Paris, as he has gone out of India for or on taking up employment outside India.

His return to India for 10 days to attend a family function, will not alter his residential status.

(ii) Mr. L will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

2. (a) (i) Rule 14 (1) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year.

Rule 14 (2) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014* has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

(b) (i) As per the Companies Act, 2013, in case of joint shareholders, they must concur in voting unless the articles provide to the contrary.

As per Regulation 52 of Table F, 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. The joint-holders have a right to instruct the company

as to the order in which their names shall appear in the register of members.

Accordingly, in case of Mr. M and Mr. P, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is cast in favour of resolution or against it.

(ii) According to section 76 (1) of the Companies Act, 2013, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

Okara Limited is having net worth of ₹ 110 crore. Hence, it falls in the category of 'eligible company' and thus can accept the deposits from public.

(c) According to section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

In the given question, Mr. Sharad was granted authorization to appoint the said employees. This implies (in terms of the General Clauses Act, 1897) that he also had the power to dismiss or suspend these employees. Hence, Mr. Suresh's argument is not valid.

3. (a) Pre-requisites for issue of bonus shares

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

a. it is authorised by its Articles,

b. it has on the recommendation of the Board, been authorised in the general meeting of the company.

c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.

d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

f. it complies with such conditions as prescribed by Rule 14 of the *Companies (Share capital and debenture) Rules, 2014,* that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

(b) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.

Here, the term 'members personally present' refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

(i) Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present.

Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates.

Hence, total 15 members were present at the meeting held on 10.12.2023.

Thus, the requisite quorum was present.

(ii) In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

(c) Difference and Relationship between Interpretation and Construction

The two terms- 'Interpretation' and 'Construction', are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

4. (a) According to section 130 of the Companies Act, 2013, a company shall not:

a. re-open its books of account and

b. recast its financial statements,

unless an application in this regard is made by:

a. the Central Government,

b. the Income-tax authorities,

c. the Securities and Exchange Board of India (SEBI),

d. any other statutory regulatory body or authority or

e. any person concerned.

& an order is made by a court of competent jurisdiction or tribunal to the effect

a. That the relevant earlier accounts were prepared in a fraudulent manner; or

b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(b) According to section 6 of the Limited Liability Partnership Act, 2008,

(i) Every LLP shall have at least two partners.

(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

(c) It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other. A specific rule will override a general rule. This principle is usually expressed by the maxim, "*generalia specialibus non derogant*".

However, this rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only

then such natural meaning will prevail. The court shall not attempt an interpretation based on equity and harmonious construction.

5. (a) According to section 31 of the Limited Liability Partnership Act, 2008,

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

(2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(b) The relevant provision under the Companies Act, 2013 deals with the prohibition on the appointment of auditors due to conflict of interest is governed by Section 141(3)(d).

Section 141(3)(d) states that a person shall not be eligible for appointment as an auditor of a company if such person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

Golden Smith Ltd. is prohibited from appointing M/s Kukreja & Associates as its audit firm due to the presence of Mr. Shyam, who is a partner in both M/s Krishna & Associates and M/s Kukreja & Associates. According to rules, this creates a conflict of interest. This prohibition lasts for 5 years from the end of M/s Krishna & Associates' term as auditors, which in this case is until the year 2031. After this cooling-off period, Golden Smith Ltd. may freely choose to appoint either M/s Kukreja & Associates or M/s Krishna & Associates as its auditors.

(c) Gender and number

According to section 13 of the General Clauses Act, 1897, in all legislations and regulations, unless there is anything repugnant in the subject or context-

(1) Words importing the masculine gender shall be taken to include females, and

(2) Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun ‘he’ and its derivatives may be

construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in Section 125(1) (d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply.

6. (a) (i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.

Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) 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.

(b) Under Section 388 of the Companies Act, 2013, certain requirements must be met when including statements made by experts in a prospectus for securities issued by a company incorporated or to be incorporated outside India.

Firstly, if the prospectus includes a statement made by an expert, the expert must give written consent to the inclusion of the statement in the form and context in which it appears. If the expert withdraws their consent before the prospectus is delivered for registration, or if there is no statement indicating that the expert has given and not withdrawn their consent, the prospectus cannot be issued, circulated, or distributed in India.

Secondly, the prospectus must have the effect, upon application, of rendering all persons concerned bound by all the provisions of Section 33 (Issue of application forms for securities) and Section 40 (Securities to be dealt with in stock exchanges), as far as applicable. This ensures that all relevant parties are subject to the legal obligations outlined in these sections.

It's important to note that a statement made by an expert is deemed to be included in a prospectus if it appears on the face of the prospectus, is incorporated by reference, or is issued with the prospectus.

Hence, compliance with the requirements of Section 388 is crucial for the validity of a prospectus issued for securities by a company incorporated or to be incorporated outside India. Failure to meet these requirements may render the prospectus invalid for distribution in India.

(c) Yes, the stated transaction falls under the category of current account transactions. As per the requirements stated under Schedule III of the Current account Transaction Rules 2000, under the FEMA, 1999, Mr. Patel payment for his child's education fees in the United States represents a payment for a service (education) provided by a foreign entity (an educational institution in the United States).

According to FEMA, payments for education expenses of family members residing abroad are considered current account transactions. Therefore, Mr. Patel's payment for his child's education fees falls under this classification.

Further, the purpose of the transaction is to cover the living and education expenses of a family member (Mr. Patel's child) residing abroad, which aligns with the definition of current account transactions. Patel's payment for his child's education fees in the United States qualifies as a current account transaction under FEMA, as it meets the criteria outlined in the regulations.