ANSWERS OF MODEL TEST PAPER 8

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART I- CASE SCENARIO BASED MCQS

1. (c)

2. (d)

3. (c)

4. (b)

5. (a)

6. (c)

7. (c)

8. (b)

9. (b)

10. (a)

11. (d)

12. (b)

13. (b)

14. (b)

15. (d)

ANSWER TO PART II- DESCRIPTIVE QUESTIONS

1. (a) As per section 50 of the Companies Act, 2013, (the Act) a company may, if so authorized by its Articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

As per section 51 of the Act, a company may, if so authorized by its Articles, pay dividends in proportion to the amount paid-up on each share. The Board of Directors of a company may decide to pay dividends on pro-rata basis if all the equity shares of the company are not equally paid-up.

Interest can be paid on such advance, if permitted by Articles. Here it is worth noting that, where the rate of interest is permitted by the Articles on such advance payment, same could be varied by shareholders in general meeting.

Further, section 49 of the Act, specifies that calls shall be made on a uniform basis on all shares that are falling under the same class. A

shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due.

Hence, in the light of the stated provisions, SAB Health Products Limited is permitted to do the following acts:

Is Mr. GH's claim justified?

Mr. GH is entitled to claim interest on money advanced by him and also dividend in proportion to the amount paid-up on each share, if so authorized by the Articles of the company.

In the matter of Mr. LK

Whereas, with respect to Mr. LK, calls shall be made on a uniform basis by the directors, on all shares that are falling under the same class as per section 49 of the Act. A call cannot be made on some of the members only, unless they constitute a separate class of shareholders.

Therefore, the action of the Board of Directors of SAB Health Products Limited towards Mr. LK for calling to pay the entire amount due by him in respect of the shares held by Mr. LK is invalid and not permissible.

(b) **(i)** Voluntary Revision of Financial Statements or Board's Report on the Approval of the Tribunal

As per section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or

b. the report of the Board does not comply with the provisions of section 134

they may prepare revised financial statement or board's report in respect of any of the 3 preceding financial years after obtaining the approval of the Tribunal on an application made by the company within fourteen days of the decision taken by the Board.

A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within 30 days of the date of receipt of the certified copy.

In the given question, Mr. C has advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22. The Board of Directors can do so as the said financial statements are pertaining to not later than three preceding financial years (from 2024- 2025) and by obtaining the approval of the Tribunal within fourteen days of the decision taken by the Board.

(ii) As per section 139(2) of the Companies Act, 2013, listed companies and such class of companies as prescribed, shall not appoint or re- appoint an audit firm as auditor for more than two terms of five consecutive years.

Further, on the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a company immediately preceding the financial year.

It means, if a partner (common partner), who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of Chartered Accountants, such other firm shall also be ineligible to be appointed as succeeding auditor of same company after two terms of five consecutive years. i.e. cooling period. [Rule 6(3) of Companies (Audit and Auditors) Rules, 2014]

The audit of Right Trading Limited was conducted by M/s DEF and after expiry of two consecutive terms, it is proposed to appoint
M/s XYZ. Mr. F is the common partner in M/s DEF and M/s XYZ, hence, the appointment of M/s XYZ is not valid.

(c) (i) Can Ms. Rose purchase the house in USA and continue to retain it even after returning to India?

According to section 6(4) of the Foreign Exchange Management Act, 1999, (the Act) a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Ms. Rose stayed in USA for 12 years, hence she must have become a non–resident for those years. She purchased a house during this time.

As per the above provisions, Ms. Rose can rightfully purchase the house in USA and continue to retain it after returning to India.

(ii) Can Ms. Rose purchase another house in USA after returning to India?

Ms. Rose deposited the amount of rent from the house to her account in USA. Out of that amount she purchased another house in USA after returning to India. Ms. Rose is a person resident in India due to joining an employment in India.

As per section 6(4)(iv) of the Foreign Exchange Management Act, 1999 (FEMA), a person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by her

and the transactions is not in contravention to extant FEMA provisions.

In view of the above, Ms. Rose can rightfully purchase another house in USA after returning to India.

2. (a) Whether Stuti Ceramic Pvt Ltd (SCPL) can raise funds through Private Placement?

Yes, SCPL can raise funds through the private placement of shares.

Section 23(2)(b) of the Companies Act, 2013 (the Act) provides that a private company may issue securities through private placement by complying with the provisions specified in section 42 of the Act in supplement with those stated under Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Meaning of Private Placement

According to the Explanation I to section 42(3) of the Act, “private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer- cum-application, which satisfies the conditions specified in this section.

Offer to be made only to a select group of persons

A private placement shall be made only to a select group of not more than two hundred (200) persons (referred to as “identified persons”) in a financial year who have been identified by the Board after passing a special resolution [Section 42(2) read with Rule 14(1) of the Companies (Prospectus and Allotment of Securities), Rules 2014].

Limit on Fresh Offer

As per section 42(5) of the Act, no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Thus, Stuti Ceramic Pvt. Ltd. can raise further funds through private placement issue after the allotments with respect to right issue for ₹ 100 lakh have been completed and subject to the maximum number of 200 persons (identified persons) under section 42(2) and by complying with the procedures stated in Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Time Limit for Allotment of Securities

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 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 12% per annum from the expiry of the sixtieth day.

(b) (i) Whether Dolls Toys Limited is permitted to accept deposits from Public other than its members?

Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposits) Rules, 2014 deal with acceptance of deposits from public other than its members by 'eligible companies'.

Accordingly, a public company, having net worth of not less than ₹ 100 crore or turnover of not less than ₹ 500 crore, and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other than its members.

Eligible Company: As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, a public company, having net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees, may accept deposits from persons other than its members. Such type of public company is known as 'eligible company'.

In the given question, Dollys Toys Limited has a net-worth of ₹ 310 crore and turnover of ₹ 300 crore.

Since at least one condition is satisfied that is net worth is ₹ 310 crore which is more than the prescribed limit, and assuming it has obtained the prior consent by a special resolution and filed it with the Registrar of Companies, it is permitted to accept deposits from public other than its members.

Thus, Dollys Toys Limited is an eligible company and hence can accept deposits from public other than its members.

(ii) Whether Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposits cannot exceed thirty- six months.

Exception to the rule of tenure of six months: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that:

(i) such deposits shall not exceed ten per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

Hence, Dolly Toys Limited is permitted to accept deposits with repayment period of 4 months in compliance to the stated provisions.

However, by virtue of exception to the rule of tenure of six months as stated above, since the company cannot accept the deposit exceeding 10% of the aggregate of the paid up share capital, free reserves and security premium account which is ₹ 310 crore therefore the company can accept the deposits to the extent of ₹ 31 crore only.

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

Where, if any specific date of enforcement is prescribed in the Official Gazette, the Act shall into enforcement from such date.

(ii) According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

3. (a) (i) Can Star Furnishing Limited, make further investments in equity shares of Home Décor Limited during 2024-25?

According to section 19 of the Companies Act, 2013, a subsidiary company is not allowed to hold shares of its holding company. The prohibition also extends up to the nominees of the subsidiary company. Also, a holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

The prohibition does not apply to the following cases:

(a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) Where the subsidiary company holds such shares as a trustee; or

(c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

It is also provided that the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

In the given question Star Furnishing Limited is a subsidiary of Home Décor Limited as it holds 60% (6,00,000/10,00,000 shares) shares of Star Furnishing Limited. Simultaneously, Star Furnishings Limited is holding 7% equity shares in Home Décor Limited out of which 2% are held as a legal representative of a deceased member of Home Décor Limited.

These shares are held by Star Furnishings Limited before Home Décor Limited became its holding company. However, after becoming its subsidiary, Star Furnishings Limited cannot make further investment in Home Décor Limited.

(ii) As per second proviso to section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Accordingly, Star Furnishings Limited can exercise voting rights at the Annual General Meeting of Home Décor Limited only in respect of 2% shares held in the capacity of legal representative and not for other 5% shares.

(b) (i) According to section 77(1) of the Companies Act, 2013, it shall be the duty of a company creating a charge to register it with the Registrar of Companies within 30 days from the date of creation of the charge. The obligation to register a charge arises not merely at the time of sanctioning the credit limit but when the charge is created.

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favor of the lender.

The Trigger point for registration of charge arises when the Bank has sanctioned the mortgaged backed credit limit, documentation was done, papers of the property for creation of the mortgage was

tendered by the company for creation of fixation of the credit limits.

Here, the words 'creating a charge' refers to the accepting of the property papers for the purpose of creation of charge. Thus, it is the date when the credit limits were sanctioned as assigned to the company and not the date when the company had actually drawn a cheque from such credit limit.

(ii) Consequence of non-registration of charge [Section 77 (3) & (4)]

No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar.

This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respect of any property before the charge is actually registered.

(c) Rule that suggests 'Plain Word requires no explanation'

This Rule is called "Rule of Literal Construction".

It is a cardinal rule of construction that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning. Therefore, the language used in the statute must be construed in its grammatical sense. The correct course is to take the words themselves and arrive if possible, at their meaning without reference to cases, in the first instance.

If the phraseology of a statute is clear and unambiguous and capable of one and only one interpretation, then it would not be correct to extrapolate these words out of their natural and ordinary sense. When the language of a statute is plain and unambiguous it is not open to the courts to adopt any other hypothetical construction simply with a view to carrying out the supposed intention of the legislature.

This principle is contained in the Latin maxim "*absoluta sententia expositore non indiget*" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations– one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

Technical words are to be understood in a Technical sense only

This point of literal construction is that technical words are understood in the technical sense only.

In construing the word 'practice' in the Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369).

4. **(a)** As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, XYZ Ltd. is facing losses in business during the first and second quarter of financial year 2023-2024. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 15% and 30% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+15+30=60/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 30% during the F.Y. 2023-2024 is not valid.

(b) According to section 63 of the Limited Liability Partnership Act, 2008, the winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up, may be dissolved.

As per section 64 of the Limited Liability Partnership Act, 2008, a LLP may be wound up by the Tribunal, if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or Annual Return for any 5 consecutive financial years.

In the present case, M/s Strong Steels LLP did not file its Annual Returns from 2020-21. In the financial year 2024-25, the default in filing of annual return has not continued for 5 consecutive years. In view of

the facts of the question and provisions of the Act, the Tribunal cannot pass an order to wind up M/s Strong Steels LLP.

The objection of remaining partners is correct.

Annual Return [Section 35]

(1) Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

(2) Penalty for non-filing of annual return:

LLP– ₹ 100 per day subject to maximum ₹ 1,00,000

Every Designated Partners – ₹ 100 per day subject to maximum ₹ 50,000.

(c) (i) Purpose of inclusion of 'definition' of certain words and expressions in the body of any statute

The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the Statutes 'definitions' of certain words and expressions used in the body of the statute.

When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. This is called an exhaustive definition. The Court cannot ignore an exhaustive statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

(ii) Restrictive and extensive 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.

We may also find a word being defined as 'means and includes' such and such. In this case, the definition would be exhaustive.

On the other hand, if the word is defined 'to apply to and include', the definition is understood as extensive.

5. (a) In terms of section 128(3) of the Companies Act, 2013 the books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as prescribed in Rule 4 of the Companies (Accounts) Rules, 2014.

The financial information shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

As per the facts of the question, the books of accounts and other records including minutes books are maintained at the registered office of Designer's Cloths Ltd. in Mumbai i.e. within India. Sanjana as the director of the company can inspect the books of accounts and minutes books. But she cannot authorize Avantika to make an inspection on behalf of her.

(b) Whether X has any remedy against the denial?

According to section 42 of the Limited Liability Partnership Act, 2008, the rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

In the given question, the partners of Alpha LLP are correct in denying access of information about trading transactions to X (daughter of A).

X does not have any remedy against the denial by the partners of Alpha LLP.

(c) (i) Whether offence is punishable under both the Acts?

According to section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. A who is liable for the fraudulent activity under both the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, will

be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

(ii) Whether Purchases made could be said to be made in Good Faith?

According to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act, 1897 is one of fact in Maung Aung Pu v. Maung Si Maung, it was pointed out that the expression 'good faith' is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act. The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Hence, in the given case, the purchase of car by Mr. P cannot be said to be made in good faith.

6. (a) (i) Can the Board of Silk Textile Limited can hold its EGM at Dubai?

As per section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

As per the facts given in the question, Silk Textile Limited is a Company incorporated in India and has two subsidiaries incorporated outside India. In Print Limited, it holds 80% of the shares and Stitch Limited is its wholly owned subsidiary. As Silk Textile Limited is incorporated in India the Company can call the EGM anywhere only in India. Hence, it cannot hold its EGM at Dubai (outside India).

(ii) Whether the EGM of Print Limited can be held in Dubai?

Print Limited is incorporated outside India and its 80% shares are held by Silk Limited (incorporated in India).

Hence, it is not a wholly owned subsidiary of Silk Limited. Only a wholly owned subsidiary of a company incorporated outside India, can hold its EGM outside India. In view of the above, Print Limited cannot hold its EGM in Dubai.

OR

(a) (i) Can Raman, as an individual shareholder make a requisition for calling an EGM?

According to section 100 of the Companies Act, 2013, in the case of company having a share capital, EGM may be called by the Board of Directors at the requisition of such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting.

If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

In the given question, Raman is holding 1/10th [5,00,000/50,00,000] of the paid up share capital. Hence, he can, even as a single shareholder (holding 1/10th of the paid up share capital), make a requisition to the company for calling the EGM.

(ii) If the company does not call the EGM on the requisition of Raman

If the company does not within 21 days from the date of receipt of a valid requisition from Raman, proceed to call the EGM for the consideration of the matter of removal of Somnath, on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called by Raman himself within a period of 3 months from the date of the requisition.[Section 100(4)].

In this regard, Rule 17 of the Companies (Management and Administration) Rules, 2014 containing the provisions with regard to calling of EGM by requisitionists shall be followed.

Further, section 100 (5) of the Act provides that a meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(b) (i) Whether Beauty Cosmetics shall be deemed to be a foreign company or an Indian company?

As per section 2(42) of the Companies Act, 2013, a 'foreign company' means any company or a body corporate incorporated outside India which has:

(a) a place of business in India whether by itself or through an agent physically or through electronic mode and

(b) conducts any business activity in India in any other manner.

In the given question, Beauty Cosmetics, a Korean company has established a place of business in India (branch office in Chennai) and also carries on the business in India. Hence, Beauty Cosmetics shall be deemed to be a foreign company under the Companies Act, 2013 for the business carried on by it in India.

Further, according to section 379(2) of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:

(i) one or more citizens of India; or

(ii) by one or more companies or bodies corporate incorporated in India; or

(iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and other prescribed provisions of the Companies Act, 2013, with regard to the business carried on by it in India as if it were a company incorporated in India.

In the given question, 50% (10% + 20% + 20%) of the share capital of Beauty Cosmetics (incorporated in Korea) is held by Mr. L (Indian Citizen), Mr. R (Indian Citizen) and Fairness Cosmetics Limited (Indian Company) respectively.

Hence, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India.

(ii) Whether Beauty Cosmetics, for the business carried on by it in India, be required to comply with the provisions of the Act?

Since, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India, it is required to comply with the relevant provisions of the Companies Act, 2013, as if it is an Indian company.

(c) As per Schedule III to the Foreign Exchange Management Act, 1999, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India, for donations exceeding 1% of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for:

a. Creation of Chairs in reputed Educational Institutes,

b. Contribution to Funds (not being an investment fund) promoted by Educational Institutes; and

c. Contribution to a Technical Institution or Body or Association in the field of activity of the Donor Company.

In the given question, Mitali Diamonds Limited can donate lower of USD 3,300 [1% of (1,25,000 + 1,10,000 + 95,000)] or USD 5,000,000.

Thus, Mitali Diamonds Limited can give a donation of USD 3,300 without RBI approval and for USD 10,000 it shall require prior approval of the Reserve Bank of India to the said institution as this institution is a Technical Institution or Body or Association in the field of activity of the Donor Company.