DPH2

Roll. No. ……..

Total No. of Question -5 **Maximum Marks : 70**

Test Paper with Solutions

Company Law & Other Law

CA-Intermediate (May 2023) | Examination

Instructions for the Candidates :

- The question paper comprises two **Part I and Part II.**
- Part I comprise Multiple Choice Question (MCQs).
- Part II comprises question which require descriptive type answers.
- Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
- Answers to Question in Part I are to be marked on the OMR answer sheet only. Answer to questions in Part II are to be written on the descriptive type answer book. Answers to MCQs, if written in the descriptive type answer book, will not be evaluated.
- OMR answer sheet will be in English only for all candidates, including for Hindi medium candidates.
- **The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive type answer book.**
- You will be allowed to leave the examination hall only after the conclusion of the exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
- Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, (b) OMR answer sheet thereon and (c) the answer book in respect of descriptive type answer book to the invigilator before leaving the exam hall, after the conclusion of the exam.
- The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above – mentioned items
- Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

General Instructions:

- Question paper comprises **5** questions. Answer Question No. **1** which is compulsory and any 3 out of the remaining **4** questions.
- Working notes should form part of the answer.
- Answers to the questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be evaluated.

Disclaimer Clause :

- These Solutions are prepared by the Expert Faculty Team of RESONANCE .
- Views and Answers provided may differ from **ICAI** due to difference in assumptions taken in support of the answers .
- In such case answers as provided by "**ICAI**" will be deemed as final .

PART– II

1. (a) Innovative Ltd. a start-up by a few qualified professionals, which was incorporated in 2014.The company is booming and favouring the younger generation to work. The Capital Structure of the Company is as follows :

Particulars	INR (Crores)
Authorised Share Capital	
100,00,000 Equity Shares of ₹ 10 Each	10.00
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of ₹ 10 Each	5.00
Share Premium	1.00
General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of Company was passed in this manner.
"The Resolution specifies 15 lakh sweat equity shares, Current Market price ₹ 25 per share with a consideration of Z 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares company under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate ?

(ii) Whether lock-in period was justifiable ?

(6 Marks)

Ans. Meaning of 'sweat equity shares': As per Section 2 (88), the term 'sweat equity shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Limit on issue of Sweat Equity Shares: According to Rule 8 (4), a company shall not issue sweat equity shares for more than fifteen per cent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

Provided further that a startup company, as defined in notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital upto ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

(i) Yes, the size of sweat Equity share was appropriate. Innovative is a startup so it may issue sweat equity shares not exceeding fifty percent of its paid up capital upto ten years from the date of its incorporation or registration.

(ii) Lock in period was not justifiable because sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

1. **(b)** ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20% and 25%.

Unfortunately, due to absolescence of a special part of machinery, company incurred losses in current financial year.

Even though during the financial years 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the FY 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @ 15% in this board meeting.

The general meeting of the shareholders was convened on 31s' August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20%, and 25% But the Company Secretary emphasised that final dividend cannot be increased.

(i) 'Whether company can declare interim dividend. it company incurred losses during the current financial year ? What should he correct rate of interim dividend ?

(ii) Do you think decision of company secretary is correct ? What should he correct rate of final dividend ?

Justin Your answer with reference to provisions of the companies Act 2013.

(6 Marks)

Ans. Interim Dividend Section 123 (3) and also section 123 (4) contain provisions regarding interim dividend. Following points are noteworthy:

- Interim dividend may be declared by the Board of Directors at any time during the period from closure of financial year till holding of the annual general meeting.

  The declaration of interim dividend is done out of profits before the final adoption of the accounts by the shareholders and therefore, interim dividend is said to be declared and paid between two AGMs.

  If 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 (rate of) dividend declared by the company during the immediately preceding three financial years.

Final Dividend

- When the dividend is declared at the Annual General Meeting of the company, it is known as 'final dividend'.
- The rate of dividend recommended by the Board cannot be increased by the members.

(i) Yes, company declared dividend in case the company incurs loss in the current financial year. Correct rate of interim dividend not be higher than the average (rate of)

dividend declared by the company during the immediately preceding three financial years.

$\frac{15\%+20\%+25\%}{3}$ = Average rate= 20%, Therefore, the rate of dividend shall not exceed 20 %.

(ii) yes, decision of company secretary is correct. The rate of dividend recommended by the Board cannot be increased by the members.

Therefore, the rate of final dividend shall be 15 %.

1. (c) 'S' guarantees 'V' for the transactions to be done between 'V' & ' B' during the month of March, 2022. 'V' supplied goods of 30,000 on 01.03.2022 and of ₹ 20,000 on 03.03.2022 to 'B'. On 05.03.2022, `S' died in a road accident. On 10.03.2022, being ignorant of the death of `V' further supplied goods of ₹ 40,000 an default in payment by 'B' on due date, `V' sued on legal heirs of 'S' for recovery of ₹ 90,000. Describe, whether legal heirs of 'S' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act 1872.

What would be your answer, if the estate of 'S' is worth of ₹ 45,000 only ?

(4 Marks)

Ans. According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'S' was surety for the transactions to be done between 'V' & 'J' during the month of March'2022. 'V' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2022, 03.03.2022 and 10.03.02022 respectively. 'S' died in a road accident but this was not in the knowledge of 'V'. When 'J' defaulted in payment, 'V' filed suit against legal heirs of 'S' for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety ('S'), his legal heirs are liable only for those transactions which were entered before 05.03.2022 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2022 even though V had no knowledge of death of S.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

1. (d) `A drew a cheque for ₹ 20,000 payable to 'B and delivered it to him. `B' endorsed the cheque in favour of 'R' but kept it in his table drawer. Subsequently, 'B' died, and cheque was found by 'R' in 'B's table drawer. filed the suit for the recovery of cheque. Whether `R' can recover cheque under the provisions of the Negotiable Instrument Act, 1881 ?

(3 Marks)

Ans. According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. [Section 57]

In the given case, cheque was indorsed properly but not delivered to indorsee i.e. 'R', Therefore, 'R' is not eligible to claim the payment of cheque.

2. (a) A General Meeting of ABC Private Ltd. was scheduled to be held on 15th April, 2022 at 3.00 P.M. As per the notice the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of' the company appoints Mr. Y as his proxy and the proxy form dated I0-04-2022 was deposited by Mr. Y with the company at its registered office on 11-04-2022. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2022 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2022. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively ?

Ans. A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company.

Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

2. (b) (i) A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority observed, during the investigation found that there is a need to re-open the accounts of PQ Ltd. for the financial year 2015-16 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT.

Ans. (1) Apply to court for re-opening of accounts—A company shall not re-open its books of account and not 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 any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: Serving of notice: Provided that the Court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any

other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, SEBI or the body or authority concerned or the other person concerned before passing any order under this section [Sub-section (1)].

(2) Revised accounts shall be final: The accounts so revised or re-casted, shall be final.

(3) Time Limit in respect of re-opening of books of account: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be reopened within such longer period.

Application filed by competent authority is valid because reopening of FS for the financial year 15-16 is within 8 years accounts.

2. (b) (ii) SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd. requested them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of Rs.10 lakhs plus taxes for this assignment for betterment of company.

But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment ?

(3 Marks)

Ans. Section 144 of the Companies Act, 2013 provides for Auditor not to render certain services. According to this section:

(a) An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely— (a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services; (h) management services; and (i) any other kind of services as may be prescribed. [However no other kind of services has been prescribed till date]

SSR & co. cannot take assignment.

If SSR & co. accept assignment following consequences will attract-

Penalty on auditor [Section 147(2) & (3)]: (a) If an auditor of a company contravenes any of the provisions of section 139, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than ` 25,000 but which may extend to ` 5 lacs or four times the remuneration of the auditor, whichever is less.

(b) If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with- (1) imprisonment for a term which may extend to 1 year and (2) with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

(c) Further, where an auditor has been convicted as above, he shall be liable to— (1) refund the remuneration received by him to the company; and (2) pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report. (iv) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons. Such body, authority or officer shall after payment of damages to such company or persons file a report with the Central

2. (c) Akashia Steels is a famous manufacturer of steel products. Proprietor of Akashia Steels, Mr. S.K Jain appointed Mr. Satish as his agent. Mr. Satish is entrusted with the work of recovering money from various traders to whom firm sells its products. Satish has earned commission of ₹ 1,15,000 for his work. He recovers money from clients on behalf of Akashia steels. During a particular month he collects ₹ 4,00,000 but deposited in the firm's account only ₹ 2,85,000 after deducting his commission ?
Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether Act of Mr. Satish is valid ?

(4 Marks)

Ans. Right of retain out of sums received on principal's account [Section 217]: This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:
(a) all moneys due to himself in respect of advances made
(b) in respect of expenses properly incurred by him in conducting such business
(c) such remuneration as may be payable to him for acting as agent. The right can be exercised on any sums received on account of the principal in the business of agency.
Mr. satish act is vaid.

2. (d) Mr. X draws a cheque in favour of Mr. R for payment of his 3 outstanding dues of ₹ 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only ₹ 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.
Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence ?

Ans. DISHONOR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNTS [SECTION 138]
Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid, either because of the—
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an

agreement made with that bank, such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to stop the payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post- dated cheque irrespective of insufficiency of funds in the account. A post-dated cheque is deemed to have been drawn on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer, a presumption under section 139 must follow. Therefor Mr, X constitute an offence.

3. **(a)** The aggregate value of the paid-up share capital of ABC Security Services, was ₹ 200 crore divided into 20 crore equity shares of ₹ 10/-each at the end–of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10/ each. The extract of Balance Sheet of the company as on 31St March, 2022 showed the following figures :

Particulars	₹ Amount (in crore)
Authorized share capital	300
Paid -up share capital	200
Free reserves created out of profits	200
Securities Premium account	80
Credit balance of Profit & Loss account	50
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	10

Turnover of the company during the Financial year 2021-22 was ₹ 800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was ₹ 4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly.

Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provision of Corporate

Social Responsibility.

The board of Directors of the company constituted of the following persons as its directors.

Mohan Singh	-	Managing Director
Rohit and Bhavna	-	Independent Director
Venkatesh, Isha, Mohit and Muskan	-	Director

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following.

(i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to

form a CSR committee is correct ? Support your answer with the applicable provision and the required calculation.

(ii) It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR-committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014 ?

(6 Marks)

Ans. COMPANIES REQUIRED TO CONSTITUTE CSR COMMITTEE

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

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

As per Rule 3(1), every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

"Net worth" [As per Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

(i) yes, company shall be required to constitute a CSR Committee because net worth is above 500 cr.

Paid up share capital	- 200 cr
free reserve	- 200 cr
SPA	- 80 cr
P&L	- 50 cr
Total	- 530 cr
Less exp	(-10 cr)
Net worth	520 cr

(ii) yes, constitution of CSR committee is valid

Composition of CSR Committee

Corporate Social Responsibility Committee of the Board shall consist of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

According to Rule 5(1) of the Companies (CSR) Rules, 2014: The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

(i) a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;

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

(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

3. (b) L Ltd. having 2,000 members with paid up capital of ₹ 1 crore decided to hold its Annual General Meeting (AGM) on 21st August, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ₹ 6 lakhs in aggregate, has given notice of their intension for a resolution to be passed at the AGM for appointing Dawar & Co., as its Statutory) auditor from FA'. 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.

When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

In the context of- aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013 :

(i) Whether the said notice was gis en by adequate number of members and within the prescribed time limit to L Ltd. ?

(ii) Whether the company N as bound to send such representation to its members made by SNS & Co ?

(4 Marks)

Ans. Section 115 of the Companies Act, 2013 states that where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up. As per the Act, special notice is required in the following cases –

(a) Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].

(b) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].

(c) Resolution to remove a director before the expiry of his period of office [Section 169(2)]

(i) The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Therefor notice given by adequate members and within time I.e. 14 days before meeting

(ii) yes, The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.

The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

3. (c) Discuss with reasons, whether the following persons can he called as a `holder' under the Negotiable Instruments Act, 1881:

(i) X receives a promissory note drawn by his father by way of gift.

(ii) A received a cheque for full and final settlement of his dues from his client but, he is prohibited by a court order from receiving the amount of the cheque.

(iii) B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.

(iv) P works in a bank. He steals a blank cheque of A and forges A s signature.

(4 Marks)

Ans. "Holder" [Section 8] — the "holder" of a promissory note, bill of exchange or cheque means—

• any person

• entitled in his own name to the possession thereof, and

• to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. Broadly speaking, a holder means the owner of a negotiable instrument. What is required is a right to possession. A person in possession of an instrument without having a right to possess cannot be called a holder.

3. (d) When can the Preamble be used as an aid to interpretation of a statute ?

(3 Marks)

Ans. Preamble:

The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it. Like the Long Tile, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction. In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

4. (a) H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was ₹ 1.80 crores; and paid up share capital was ₹ 80 lakhs. The Board of Directors wants to avail the status of a small company. The company secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of practicing company secretary is correct, explaining the relevant provisions of the Act.

(5 Marks)

Ans. Small Company: Small company given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

(i) paid-up share capital of which does not exceed 4 crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act

The contention of CS is correct. S Ltd. is subsidiary of H Ltd. so it comes under Exception and this provision is not applicable to this case.

4. (b) Mr. Raj is an employee of LISP Trading Pvt Ltd. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Raj paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, define deposit and decide whether this amount received from Mr. Raj will be considered as deposit as per rule 2(1)(c) ?

(5 Marks)

Ans. DEPOSIT Definition: According to section 2 (31) of the Act, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Some categories of amounts are not considered as deposit [Rule 2 (1) (c)]:

(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;

Raj paid to company Rs.5,30.000 in the nature of non-interest bearing security deposit which is more than his annual salary thus it is deposite.

4. (c) "Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897.

(3 Marks)

Ans. "Effect of Repeal" [Section 6]: 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.

In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

In Kolhapur Canesugar Works Ltd. V, Union of India, AIR 2000, SC 811, Supreme Court held that Section 6 only applies to repeal and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.

4. (d) Explain the Doctrine of Contemporanea Expositio.

(3 Marks)

Ans. Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed. The maxim "optima legum interpres est consuetude" simply means, "Custom is the best interpreter of law".

Thus, the court was influenced in its construction of a statute of Anne by the fact that it was that which had been generally considered as the true one for one hundred and sixty years. (Cox Vs. Leigh 43 LJQB 123). But remember that this maxim is to be applied for construing ancient statutes, but not to acts that are comparatively modern.

5. (a) MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generics with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology deptt. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company ? State also the circumstances where an expert is not liable under the Companies Act, 2013.

(5 Marks)

Ans. Section 2(38) 'expert' includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing and a statement to that effect shall be included in the prospectus. [Sub- section (5)]

Exceptions: No person shall be liable under section 36 Sub-section (1) if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person

making the statement was competent to make it and that the said person had given the consent required by subsection (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder. [Sub-section (2)]
Mr. Divakar has remedy under section 36 Sub-section (1) if he proves above.

Or

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.
The balance sheet of M/s Frontline Limited showed the following positions as at 31st March 2022 :

(i) Authorized Share Capital (50,00,000 equity shares of ₹ 10 each) ₹ 5,00,00,000
(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of 10 each, fully paid-up) ₹ 2,00,00,000
(iii) Free Reserves ₹ 50,00,000
(iv) Securities premium account ₹ 25,00,000
(v) Capital Redemption Reserve ₹ 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue.

(5 Marks)

5. (b) City Bakers Limited obtained a term loan of ₹ 1,00,00,000 from Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property ?
Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013.

(5 Marks)

Ans. Registration of Charge to act as Constructive Notice (Section 80) All charges registered with the registrar are public documents. This means that any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA Portal and find out if there is any charge created on that asset. Please remember that any document filed with the registrar for registration acts as Constructive Notice. Constructive means “deemed”. Notice means “knowledge”.
So Constructive notice means deemed knowledge. This means even though the third party has not referred to the public document he would still be considered or deemed to have seen it. This is because a deeming provision creates a legal fiction. This principle is contained in section 80 which states that “where any charge is registered under section 77, 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, every person proposing to deal with a company should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction. In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot claim the loss from the company for it shall be deemed that he had notice of charge.
Registration by the company creating a charge:Sec-77 It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether

tangible or otherwise and situated in or outside India, to register the particulars of the charge within the prescribed period of 30 days.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. The Companies (Amendment) Second Ordinance, 2019 (w.r.e.f. 02-11-2018) has amended the provisions relating to extension of time limit as under:

(i) Charges created before 02-11-2018 (i.e. before the commencement of the Companies (Amendment) Second Ordinance, 2019)5: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

(ii) Charges created on or after 02-11-2018 (i.e. on or after the commencement of the Companies (Amendment) Second Ordinance, 2019)6: In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

5. (c) It is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. Do you think bonafide pledge can be made by non-owners ? If yes, explain the circumstances with reference to provisions of the Indian Contract Act, 1872.

(4 Marks)

Ans. Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

Exceptions:

a. Pledge by mercantile agent [Section 178]
b. Pledge by person in possession under voidable contract [Section 178A]
c. Pledge where pawnor has only a limited interest [Section 179]
d. Pledge by a co-owner in possession
e. Pledge by seller or buyer in possession

5. (d) "No person shall be prosecuted and punished for the same offence more than once." Explain in the fight of provisions of Section 26 of the General Clauses Act, 1897.

(3 Marks)

Ans. **"Provision as to offence punishable under two or more enactments" [Section 26]:**

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. Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once. According to the Supreme Court, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence.

In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the

enactments but shall not be liable to be punished twice for the same offence. In State of M.P. v. V.R. Agnihotri, AIR 1957 SC 592 it was held that when there are two alternative charges in the same trial, e.g., section 409 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, the fact that the accused is acquitted of one of the charges will not bar his conviction on the other.

Provisions of Section 26 and Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

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