(GI-2, GI-6, GI-7, VI-1, VDI-1, DRIVE & FMT)

DATE: 23.07.2023 MAXIMUM MARKS: 100 TIMING: 3¼ Hours

CORPORATE AND OTHER LAW

Answer to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium. His/her answer in Hindi will not be valued.
Question No. 1 & 2 is compulsory.
Candidates are also required to answer any three questions from the remaining Four Questions.

DIVISION A (30 MARKS)

Answer 1:

1. 1.1 Ans. D
   1.2 Ans. A
   {2 M Each}
2. Ans. d
3. Ans. c
4. Ans. a
5. Ans. c
6. Ans. b
7. Ans. b
8. Ans. c
9. Ans. d

   {1 M Each}
10. Ans. d
11. Ans. d
12. Ans. c
13. Ans. d
14. Ans. d
15. Ans. d
16. Ans. a
17. Ans. c
18. Ans. d

    {2 M Each}

DIVISION B (70 MARKS)

Answer 2:

(a) According to the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details in respect of such resolution shall also be published 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 and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

{3 M}

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this Certificate by ROC.

{1 M}

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements. {1 M}

Answer:

(b) If the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872]. {$2^{1/2}$ M} {$2^{1/2}$ M}

Answer:

(c) Allotment of Shares: The company has received 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of section 39(1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. {2 M}

Under section 39 (3), it is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available. Therefore,in the present case X is within his rights refuses to accept the allotment of shares which has been illegally made by the company. {2 M}

Answer:

(d) Capacity to make, etc., promissory notes, etc. (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. {2 M}

However, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself. {1 M}

As per the facts given in the question, Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as bind all parties except himself. Therefore, M is not liable. Mrs. A can, thus, proceed against Mr. S Venkatesh to collect her dues. {2 M}

Answer 3:

(a) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum. {1 M}

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. {1 M}

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another {1 M}

company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. **{1 M}**

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies Green Limited and Blue Limited. E, F, G and H are not to be included as they are not members but representing as proxies for the members. **{2 M}**

Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Answer:

(b) Directors' Responsibility Statement: According to section 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

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

{1 M Each for Any 4 Points}

Answer:

(c) (i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, 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. **{1 M}**

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution. **{1 M}**

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital:	Rs. 70 crores
Free Reserves:	Rs. 20 crores
Securities premium:	Rs. 20 crores
Total:	Rs. 110 crores

{1 M}

Hence, Viki Limited is an eligible company, since its Net worth is in excess of Rs. 100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew. {1 M}

Answer:

(d) According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice. {1/2 M}

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted. {1/2 M}

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned. {2 M}

Answer 4:

(a) The Companies Act, 2013 by virtue of provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum subscription and the application money payable in a public issue of shares as under:

Minimum subscription [Section 39 (1)]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

(i) the amount stated in the prospectus as the minimum amount has been subscribed; and

(ii) the sums payable on application for such amount has been paid to and received by the company- {$2^{1/2}$ M}

Application money: Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Further section 39 (3) provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.

In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank. {$3^{1/2}$ M}

Answer:

(b) According to the provisions of Section 184 of the Indian act Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. **{$2^{1/2}$ M}**

Thus, if a person who is not competent to act is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. **{$1^{1/2}$ M}**

M is not liable to A for his negligence in the performance of his duties. **{1 M}**

Answer:

(c) For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the annual general meeting. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any business. **{3 M}**

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, then it would not be illegal.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree. **{3 M}**

Answer 5:

(a) Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. **{3 M}**

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. **{1 M}**

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice. **{2 M}**

Answer:

(b) As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

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 favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard. **{2 M}**

Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it.
Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company. **{2 M}**

Answer:

(c) According to section 144 of the Companies Act, 2013, 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 designing and implementation of any financial information system. **{3 M}**
In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.
In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013. **{1 M}**
In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Answer:

(d) Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction. Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him. **{2 M}**
In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, Pankaj cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency. **{1 M}**

Answer 6:

(a) Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied: **{$2^{1/2}$ M}**

(i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;

(ii) The notice required under the Companies Act must have been duly given of the general meeting;

(iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account. {1 1/2 M}

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order. {1 M}

Answer:

(b) (i) **Procedure for reduction of share capital-**

In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital.

Procedure

(1) Reduction of share capital by special resolution: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may— {1 M}

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Issue of Notice from the Tribunal: The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt ofthe notice.

(3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit. {2 M}

(4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

(5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(ii) **Alteration of Share Capital-**

SSP Limited proposes to alter its share capital. The Present authorized share capital Rs. 5 Crore will be altered to Rs. 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum. {1 M}

A limited company having a share capital may, if so authorized by its articles, alterits memorandum in its general meeting to -

1. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
2. A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

The Company has to follow the above procedures to alter its authorized share capital.

Answer:

(c) "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. **{2 1/2 M}**

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence. **{1 1/2 M}**

Answer:

(d) "Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

(i) Land
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment. **{2 M}**

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth. **{2 M}**

—**—