

**(GI-8 & FMT)**

DATE: 30.03.2023

MAXIMUM MARKS: 100

TIMING: 3¼ Hours

**PAPER : 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 Four questions from the remaining Five Questions.

**DIVISION - A****Answer 1:**

- |     |  |  |
|-----|--|--|
| 1.  | (A): Ans. b<br>(B): Ans. d<br>(C): Ans. c<br>(D): Ans. a | } <b>2 Mark for Each Valid Answer = Total 8 Marks</b>  |
| 2.  | Answer: d  |  |
| 3.  | Answer: c  |  |
| 4.  | Answer: b  |  |
| 5.  | Answer: b  | } <b>1 Mark for Each Valid Answer = Total 22 Marks</b> |
| 6.  | Answer: c  |  |
| 7.  | Answer: c  |  |
| 8.  | Answer: a  |  |
| 9.  | Answer: d  |  |
| 10. | Answer: c  |  |
| 11. | Answer: c  |  |
| 12. | Answer: a  |  |
| 13. | Answer: d  |  |
| 14. | Answer: d  |  |
| 15. | Answer: b  |  |
| 16. | Answer: b  |  |
| 17. | Answer: d  |  |
| 18. | Answer: d  |  |
| 19. | Answer: c  |  |
| 20. | Answer: d  |  |
| 21. | Answer: d  |  |
| 22. | Answer: c  |  |
| 23. | Answer: b  |  |

**DIVISION - B****Answer 2:**

- (a) The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case. **2 M**
- However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director. **3 M**

**Answer:**

- (b) Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)
- Knowledge of irregularity : In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity. } **2 M**
- Negligence : If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances company does not make proper inquiry. } **2 M**
- Forgery : The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers. } **1 M**

**Answer:**

- (c) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission for the creditor, the legal consequence of which is the discharge of the principal debtor. } **2 M**
- In the given case the B omits to supply the timber. Hence C is discharged from his liability. } **2 M**

**Answer:**

- (d) According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. } **2 M**
- The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014. } **2 M**
- Therefore, the Board of Bharat Ltd. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure. } **1 M**

**Answer 3:**

- (a) Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the a number of conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:
- (a) The payment of such commission shall be authorized in the company's articles of association; } **3 M**
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates. In view of the above, the decision of Unique Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

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

2 M

**Answer:**

(b) "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<sup>1/2</sup> M}

Thus, Mr. Ram shall be liable to be punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

{2<sup>1/2</sup> M}**Answer:**

(c) As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

2 M

The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

On the basis of above provision, P would succeed to recover Rs. 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to Rs. 7,000 only and an accommodation to P for Rs. 3,000.

2 M

**Answer:**

(d) According to 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 permanently fastened to anything attached to the earth.

2 M

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

1 M

**Answer 4:**

(a) Conditions for the issue of equity shares with differential rights : No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely :

- (a) the articles of association of the company authorizes the issue of shares with differential rights;
- (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders :

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

<sup>1</sup>In case of private company—Section 43 shall not apply where memorandum or articles of association of the private company so provides—Notification dated 5<sup>th</sup> June, 2015.

In case of Specified IFSC Public Company—Section 43 Shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it. - Notification Date 4<sup>th</sup> January, 2017.

- (c) the shares with differential rights shall not exceed seventy four percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the company having consistent track record of distributable profits for the last three years;
- (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- (f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- (g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;  
"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."
- (h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectorial regulators.

1 Mark  
for  
each  
valid  
point  
(Max  
6 Mark)

**Answer:**

**(b)** The legal issues in the presented problem in the question is covered under Section 62(1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

As per facts of the case, the articles of SV company Ltd. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS company Ltd., which held its controlling shares. It was held that SV company Ltd. had no legal authority under the Companies Act to do so.

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violative of the provisions of Section 62(1) (a) as also substantiated by the ruling in the above referred case.

4 M

2 M

**Answer:**

- (c) Interpretation of the words "Means" and "Includes" in the 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. } 2 M  
 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. } 2 M  
 Example—  
 Definition of Director [section 2(34) of the Companies Act, 2013]— Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition. } 1 M  
 Definition of Whole time director [Section 2(94) of the Companies Act, 2013]— Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director. } 1 M

**Answer 5:**

- (a) (1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits : } 2 M  
 Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.  
 (2) The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.  
 (3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee— } 2 M  
 (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;  
 (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;  
 (c) has any material pecuniary relationship with the company;  
 (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;  
 (e) is related to any person specified in clause (a) above.  
 (4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. } 2 M  
 Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

**Answer:**

- (b) Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation }

has been received by him from the company.

- (i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge-
- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
  - (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, - enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, despite the fact that no intimation has been received by him from the company.
- (ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81(1).  
According to the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge-
- (1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
  - (2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge.

**Answer:**

- (c) Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act :
- (1) what was the law before making of the Act,
  - (2) what was the mischief or defect for which the law did not provide,
  - (3) what is the remedy that the Act has provided, and
  - (4) what is the reason for the remedy.
- The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

**Answer 6:**

- (a) Quorum: Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations. Section 103 of the Companies Act, 2013 provides the law with respect to the quorum for the meetings. The said section provides that where the Articles of the company do not provide for a larger number, there the quorum shall depend on number of members as on date of a meeting.
- In case of a public company:
- (i) five members personally present if the number of members as on the date of meeting is not more than one hundred;
  - (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

- (iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand; }  
 shall be the quorum for a meeting of the company. }  
 Consequences of no Quorum: If the quorum is not present within half-an-hour from the }  
 time appointed for holding a meeting of the company – }  
 (a) the meeting shall stand adjourned to the same day in the next week at the same }  
 time and place, or }  
 (b) to such other date and such other time and place as the Board may } **2 M**  
 determine; or }  
 (c) the meeting, if called by requisitions (under section 100), shall stand cancelled. }  
 In the instant case, KMP Limited is a public company with total number of 2750 }  
 members, hence atleast 15 members should have been personally present in }  
 order to constitute a valid quorum for the Annual General Meeting. }  
 Thus, the meeting shall automatically stand adjourned to the same day in the next }  
 week at the same time and place, if the quorum is not present within half –an- }  
 hour from the time appointed for holding a meeting of the company. Further, the }  
 Board of Directors may decide for such other date and such other time and place, } **3 M**  
 which they may deem fit. Section 103 of the said Act itself provides for automatic }  
 adjournment of the meeting to the same day in the next week at the same time }  
 and place, rather the Chairman obviating to take a decision on the matter of the }  
 meeting. The question of validity of Chairman’s decision does not arise. }

**Answer:**

- (b)** (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to }  
 distribute dividend on time. One of such situations is where a shareholder has }  
 given directions to the company regarding the payment of the dividend and those } **2 M**  
 directions cannot be complied with and the same has not been communicated to }  
 her. }  
 In the given situation, the company has failed to communicate to the shareholder }  
 Mrs. Sheela about non-compliance of her direction regarding payment of } **1 1/2 M**  
 dividend. Hence, the penal provisions under section 127 will be applicable. }  
 (ii) Section 127, inter-alia, provides that no offence shall be deemed to have been }  
 committed where the dividend could not be paid by reason of operation of law. }  
 In the present circumstance, the dividend could not be paid because it was not } **2 1/2 M**  
 allowed to be paid by the court until the matter was resolved about succession. }  
 Hence, there will not be any liability on the company and its Directors etc. }

**Answer:**

- (c)** Section 142 of the Companies Act, 2013 provides for remuneration of auditors. }  
 According to this section: }  
 (i) The remuneration of the auditors of a company shall be fixed by the company in } **2 M**  
 general meeting or in such manner as the company in general meeting may }  
 determine. }  
 (ii) In the case of first auditor, remuneration may be fixed by the Board. } **1 M**  
 (iii) The remuneration mentioned aforesaid shall, in addition to the fee payable to an }  
 auditor, include the expenses, if any, incurred by the auditor in connection with } **1 M**  
 the audit of the company and any facility extended to him. But the remuneration }  
 does not include any remuneration paid to him for any other service rendered by }  
 him at the request of the company. }

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