

## PAPER – 2: CORPORATE AND OTHER LAWS

### PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2023 EXAMINATIONS

#### Applicability for November, 2023 examinations

The Study Material (September 2021 edition) is applicable for November, 2023 examinations. This study material is updated for all amendments till 30<sup>th</sup> April, 2021.

Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1st May, 2021 to 30<sup>th</sup> April, 2023 are mentioned below:

#### **THE COMPANIES ACT, 2013**

##### **I. Chapter 1: Preliminary**

Notification G.S.R. 700(E) dated 15<sup>th</sup> September, 2022

The Central Government has amended Companies (Specification of definition details) Rules, 2014, through the Companies (Specification of definition details) Amendment Rules, 2022.

Amendment:

In the Companies (Specification of definition details) Rules, 2014,

in **Rule 2**, in sub-rule (1), for clause (t), the following clause shall be substituted, namely: -

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.”.

Old Law (Pg 1.22)

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees **two crores** and rupees **twenty crores** respectively.

##### **II. Chapter 2: Incorporation of company and matters incidental thereto**

Notification S.O. 2904(E) dated 22<sup>nd</sup> July, 2021

The Central Government has amended section 16 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

In **section 16** of the Companies Act, 2013:

(i) in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

[Enforcement Date: 1<sup>st</sup> September, 2021]

For point (i)- Old Law (Pg 2.39)

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the ..... it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a **period of 6 months** from the issue of such direction, after adopting an ordinary resolution for the purpose.

For point (ii)- Old Law (Pg 2.39)

**If a company makes default in complying with any direction—**

Liabe person	Penalty/punishment
Company	Fine of 1,000 rupees for every day during which the default continues
Every Officer who is in default	Fine varying from 5,000 rupees to 1 lakh rupees.

### **III. Chapter 3: Prospectus and Allotment of Securities**

#### **A. Notification G.S.R. 338(E) dated 5th May, 2022**

The Central Government has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014, through the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022.

#### **Amendment:**

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, —

in **rule 14**, in sub-rule (1), after the fourth proviso, the following proviso shall be inserted, namely:-

“Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.”.

Old Law (Pg 3.39)

The proviso is newly inserted after the fourth proviso to Rule 14(1), “in case of offer ..... such buyers during the year”.

B. Notification G.S.R. 37(E) dated 20<sup>th</sup> January, 2023

The Central Government has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014, through the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023.

Amendment:

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, **sub-rule (6) of rule 12** shall be omitted.

[Enforcement Date: 23<sup>rd</sup> January, 2023]

Old Law (Pg 3.27)

**Attachment of Resolution in case of Bonus Shares: Rule 12 (6) states that in the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3.**

**IV. Chapter 5: Acceptance of Deposits by Companies**

Notification G.S.R. 663(E) dated 29th August, 2022

The Central Government has amended the Companies (Acceptance of Deposits) Rules, 2014, through the Companies (Acceptance of Deposits) Amendment Rules, 2022.

Amendment:

In **rule 16**, after the words – “auditor of the company”, the words, letters and figure – “and declaration to that effect shall be submitted by the auditor in Form DPT-3” shall be inserted.

Old Law (Pt 20 on Pg 5.16) and (Pt 19 on Pg 5.24)

The words are to be inserted in pt 20 on page 5.16 and in pt 19 on page 5.24

A duly audited return of deposits in DPT-3 (containing particulars as on 31st March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30th June of that year.

**V. Chapter 6: Registration of Charges****A. Notification S.O. G.S.R. 320 (E) dated 27th April, 2022**

The Central Government has amended the Companies (Registration of Charges) Rules, 2014, through the Companies (Registration of Charges) Amendment Rules, 2022.

**Amendment:**

In **rule 3**, after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(5) Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934."

Old Law (Pg 6.6)
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Sub-rule (5) is newly inserted
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**B. Notification G.S.R. 664 (E) dated 29<sup>th</sup> August, 2022**

The Central Government has amended the Companies (Registration of Charges) Rules, 2014, through the Companies (Registration of Charges) Second Amendment Rules, 2022.

**Amendment:**

In the Companies (Registration of Charges) Rules, 2014, after rule, 12, the following rule shall be inserted, namely:-

"**13.** Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation. -

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar."

Old Law
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Rule 13 is newly inserted
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**VI. Chapter 7: Management and Administration****Notification S.O. G.S.R. 279(E) dated 6<sup>th</sup> April, 2022**

The Central Government has amended the Companies (Management and Administration) Rules, 2014, through the Companies (Management and Administration) Amendment Rules, 2022.

Amendment:

in **rule 14**, after sub-rule (2), the following sub-rule shall be inserted, namely: —

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: —

- (i) address or registered address (in case of a body corporate);
- (ii) e-mail ID
- (iii) Unique Identification Number
- (iv) PAN Number

Old Law (Pg 7.21)
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Sub- rule (3) of Rule 14 is newly inserted
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**VII. Chapter 8: Declaration and Payment of Dividend**

Notification No. G.S.R. 396(E) dated 9<sup>th</sup> June, 2021

The Central Government has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021.

Amendment:

In **rule 3**, in sub-rule (2), after clause (f), the following shall be inserted, namely:-

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;”

Old Law (Pg 8.21)
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Clause (fa) is newly inserted
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**VIII. Chapter 9: Accounts of Companies****A. The Ministry of Corporate Affairs has made clarifications with respect to CSR:**

General Circular No. 09/2021 Dated 5<sup>th</sup> May, 2021

1. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering

COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

2. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

3. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time.

General Circular 13/2021 dated 30<sup>th</sup> July, 2021

The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

General Circular 08/2022 dated 26th July, 2022

Subject: Clarification on spending of CSR funds for 'Har Ghar Tiranga' campaign reg.

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

The companies may undertake the aforesaid activities, subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

Old Law (Pg 9.47)

The clarifications are newly inserted

**B. Notification No. G.S.R. 107(E) dated 11th February 2022**

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Amendment Rules, 2022.

Amendment:

in **rule 12**, after sub-rule (1A), the following sub-rule shall be inserted, namely: —

"(1B) Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be."

Old Law (Pg 9.54)

Rule (1B) is newly inserted

**C. Notification No. G.S.R. 235(E) dated 31st March 2022**

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Second Amendment Rules, 2022.

Amendment:

In the Companies (Accounts) Rules, 2014,-

- (i) in the proviso to sub-rule (1) of rule 3, for the figures, letters and words "1st day of April, 2022", the figures, letters and words "1st day of April, 2023" shall be substituted;
- (ii) in the proviso to sub-rule (1B) of rule 12, for the figures, letters and word "31st March, 2022", the figures, letters and word "31st May, 2022" shall be substituted.

For point (i)- Old Law (Pg 9.5)

Provided that for the financial year commencing on or after the **1st day of April, 2022**, every company which uses accounting software for maintaining its books of account....

For point (ii)- Old Law

As covered above in point B.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before **31st March 2022**, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

**D. Notification No. G.S.R. 407(E) dated 31st May 2022**

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Third Amendment Rules, 2022.

Amendment:

In the Companies (Accounts) Rules, 2014, in **rule 12**, in sub-rule (1B),-

- (i) for the figures, letters and word "31st May, 2022", the figures, letters and word "30th June, 2022", shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that for the financial year 2021-2022, Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be".

For point (i)- As covered above in point C.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before **31st May, 2022**, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

For point (ii)- Old Law

The proviso is newly inserted.

**E. Notification No. G.S.R. 624(E) dated 5th August, 2022**

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Fourth Amendment Rules, 2022.

**Amendment:**

In the Companies (Accounts) Rules, 2014, in **rule 3**,-

- (i) in sub-rule (1), for the words "accessible in India", the words "accessible in India, at all times," shall be substituted;
- (ii) in sub-rule (5), in the proviso, for the words "periodic basis", the words "daily basis" shall be substituted;
- (iii) in sub-rule (6), after clause (d), the following clause shall be inserted, namely:-

"(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India."

For point (i) - Old Law (Pg 9.5)

- (1) The books of account and other relevant books and papers maintained in electronic mode shall remain **accessible in India** so as to be usable for subsequent reference.

For point (ii) - Old Law (Pg 9.5)

- (5) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a **periodic basis**.

For point (iii) - Old Law (Pg 9.6)

- (e) is newly inserted in point (6)

F. Notification No. G.S.R. 715(E) dated 20th September, 2022

The Central Government has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014, through the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

Amendment:

1. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in **rule 3**, -
  - (i) in sub-rule (1), after the proviso, the following proviso shall be inserted, namely: -
 

“Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.”;
  - (ii) sub-rule (2) shall be omitted.

For point (i) - Old Law (Pg 9.35)

The proviso is newly inserted

For point (ii) - Old Law (Pg 9.36)

**Exclusion of Companies [Rule 3(2) of the Companies (CSR) Rules, 2014]**

**Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to-**

- (a) constitute a CSR Committee; and**
  - (b) comply with the provisions contained in sub-section (2) to (6) of the said section,**
- till such time it meets the criteria specified in sub-section (1) of section 135.**

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in **rule 4**, for sub-rule (1), the following sub-rule shall be substituted, namely: -
 

‘(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through, –

  - (a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or

- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

**Explanation.-** For the purpose of clause (c), the term “entity” shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.’.

Old Law (Pg 9.42)

**(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through-**

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or**
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or**
- (c) any entity established under an Act of Parliament or a State legislature; or**
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.**

3. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, **in rule 8, in sub-rule (3)**, in clause (c),-
- (i) for the words “five percent”, the words “two per cent.” shall be substituted;
  - (ii) for the words “whichever is less”, the words “whichever is higher” shall be substituted.

Old Law (Pg 9.44)

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed **five percent** of the total CSR expenditure for that financial year or fifty lakh rupees, **whichever is less.**

**PART – II : QUESTIONS AND ANSWERS****QUESTIONS****DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS**

Bharat Sanskar Limited having its registered office at Haridwar, is a listed public company. It is registered with an authorised share capital of ₹ 300 crore divided into 30 crore equity shares of ₹ 10/- each. The paid-up share capital of the company is ₹ 200 crore divided into 20 crore equity shares of ₹ 10/- each. The company is very renowned in manufacturing and supplying devotional items such as high-quality worship materials, fragrances, various types of decorative goods, idols etc.

The Board of Directors of the company constituted of Sagar as the Managing Director and Hari, Rahi, Sansar & Nabh as directors of the company. In the company Raju was holding the post of Company Secretary, Sonu designated as Chief Financial Officer and Moti as Assistant Accountant. The company prepared its Financial Statement for the year 2022-23, the Board of Directors approved the same and it was signed by the concerned authorities and thereafter submitted to the auditors on 10th May, 2023 for their report. The turnover of the company was ₹ 100 crore during the year 2022-23. The auditor's report was duly received and the annual accounts with Board's report and all necessary annexures were ready on 15th July 2023 after complying with all the formalities as per company law.

The Board Meeting was called on 25th July, 2023 and the Annual General Meeting was fixed on 20th August, 2023. At the Annual General Meeting the Financial Statement along with all annexures was duly received and adopted by the members present. However, the company could not file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting, with the Registrar.

It is also informed that in April, 2023, the company had destroyed all the books of account together with relevant vouchers up to financial year ending on 31st March, 2018.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following queries given herein under: -

**Multiple Choice Questions (MCQs)**

1. The Companies Act, 2013 provides that the financial statement should be approved by the Board of Directors, signed by the prescribed authorities and submitted to the auditors for their report. Accordingly, the financial statements of Bharat Sanskar Limited shall be signed by:
  - (a) Sagar, Raju and Sonu
  - (b) Sansar, Hari, Raju and Sonu
  - (c) Sagar, Sansar, Raju and Moti

- (d) Sagar, Sansar, Raju and Sonu
2. As per provisions of company law, the Board's report with annexures thereto of the above company is required to be duly signed by -
- (a) Sagar only
  - (b) Sagar and Hari
  - (c) Sagar and Raju
  - (d) Sagar and Sonu
3. In the above case scenario, the company failed to file copies of financial statement along with all the documents annexed to the financial statement adopted at the Annual General Meeting with the Registrar. In this context, which of the following statements is correct?
- (a) Sagar, Raju and Sonu shall be liable to a penalty.
  - (b) The company, Sagar and Raju shall be liable to a penalty.
  - (c) The company, Sagar and Sonu shall be liable to a penalty.
  - (d) Sagar, Raju and Sonu shall be liable to a penalty.
4. As per provisions of the Companies Act, 2013, the act of the company in destruction of all books of account together with relevant vouchers was not correct because –
- (a) The books of accounts etc. relating to a period not less than 6 preceding financial years are required to be kept in good order.
  - (b) The books of accounts etc. relating to a period not less than 8 preceding financial years are required to be kept in good order.
  - (c) The books of accounts etc. relating to a period not less than 10 preceding financial years are required to be kept in good order.
  - (d) The books of accounts etc. relating to a period not less than 12 preceding financial years are required to be kept in good order.
5. A method of interpretation which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.
- (a) Rule of Literal Construction
  - (b) Rule of Harmonious Construction
  - (c) Rule of Beneficial Construction
  - (d) Rule of Exceptional Construction
6. Win Limited bought 15% shares of Om Limited in the year 2018. In the year 2020 it formed a trust for its employees and donated its 15% shares of Om Limited along with ₹ 10,00,000 to the trust and became its trustee. In February 2023, Om Limited acquired 55% stake in

Win Limited through an in-house deal. Can a subsidiary company hold shares in its holding company justifiably in this situation?

- (a) Win Limited cannot represent itself as a trustee after it becomes a subsidiary of Om Limited.
  - (b) Win Limited can represent itself as a trustee only after it was a holding company of Om Limited.
  - (c) Win Limited cannot hold shares as a trustee even though it is a subsidiary company.
  - (d) Win Limited can do so as it is holding shares in Om Limited prior to becoming a subsidiary of it.
7. The date of maturity of a bill payable hundred days after sight and which is presented for sight on 4th May, 2023, is:
- (a) 13 August, 2023
  - (b) 14 August, 2023
  - (c) 15 August, 2023
  - (d) 16 August, 2023
8. Newage Private Limited issued 9% Non-convertible Debentures worth ₹ 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ₹ 10 lakh were listed. Which of the following options is applicable in the given situation:
- (a) Newage Private Limited shall be considered as a listed company.
  - (b) Newage Private Limited shall not be considered as a listed company.
  - (c) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakh.
  - (d) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakh.
9. A company enter into process of reducing capital. Mr. Shah is concerned officer designated for preparing the list of creditor to records their reservation and reach to a settlement under section 66 of the Companies Act, 2013. Mr. Shah while preparing such list deliberately conceal the name of Ms. Ramya who is one of the company's creditor and object to the reduction, whereas make misstatement in context of some other creditors' claims. The offence committed by Mr. Shah is punishable under; (i) Under section 447 of the Companies Act, 2013 and (ii) Also under sections 417 read with 415 of Indian Penal Code 1860 (as dishonest concealment is involved). You are required to select the most appropriate option out of given below in context of offence committed by Mr. Shah:

- (a) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code 1860, but shall be punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
- (b) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code, 1860, but shall be punished under the Companies Act, 2013 or the Indian Penal Code, 1860 where maximum punishment is lower.
- (c) Mr. Shah shall be liable to be prosecuted and punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
- (d) Mr. Shah shall be liable to be prosecuted and punished under both of the Companies Act, 2013 and the Indian Penal Code, 1860.
10. Vichar Vimarsh Limited called its Annual General Meeting on 20th September, 2022 to consider and adopt the financial result as of 31st March, 2022. Due to want of quorum the meeting was adjourned and the adjourned meeting was held on 27th September, 2022. What is the last date of filing of Annual Return with the Registrar of Companies:
- (a) 60 days from the date of 31st March, 2022
- (b) 60 days from the date of 20th September, 2022
- (c) 60 days from the date of 27th September, 2022
- (d) 60 days from the date of 30th September, 2022

## DIVISION B: DESCRIPTIVE QUESTIONS

### PART I: COMPANY LAW

#### The Companies Act, 2013

11. The paid-up share capital of Golden Shoes Limited is ₹ 25,00,000 divided into 2,50,000 equity shares of ₹ 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.
12. Satvikya Private Limited was formed on 25<sup>th</sup> April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance.

However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance.

Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void?

13. The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	Dividend Declaration Date	Dividend Amount (₹)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value ₹ 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):-

- (a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?
- (b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?
14. Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013.
15. Shree Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹ 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the stock market and requested the company to reduce the face value of each share to ₹ 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable, as per the provisions of the Companies Act, 2013.
16. A Limited Company raised the secured deposit of ₹ 80 crore on 30<sup>th</sup> June, 2023 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:
- |                   |            |
|-------------------|------------|
| Land & Building   | ₹ 55 crore |
| Plant & machinery | ₹ 15 crore |
| Factory Shed      | ₹ 10 crore |

Trade Mark ₹ 10 crore

Goodwill ₹ 15 crore

Decide on the validity of the charges created with reference to the provisions of the Companies Act, 2013.

## **PART II: OTHER LAWS**

### **The Indian Contract Act, 1872**

17. Mr. Sanjeev is dealing in high quality timber. Mr. Amit wants to purchase the timber from him on credit which is to be used in renovation of his house. Mr. Pramod gives a guarantee to Mr. Sanjeev for timber to be supplied by Mr. Sanjeev to Mr. Amit. Mr. Sanjeev supplied the required timber to Mr. Amit. Afterwards, Mr. Amit embarrassed and contracts with his creditors (including Mr. Sanjeev) to assign to them his property in consideration of their releasing him from their demands. On due date, Mr. Sanjeev filed the suit against Mr. Pramod for recovery of the payment of timber due to Mr. Amit. Explain, with reference to Indian Contract Act 1872, whether Mr. Sanjeev can claim the payment from Mr. Pramod?

### **The Negotiable Instruments Act, 1881**

18. Mr. Vibhav made endorsement of a bill of exchange amounting ₹ 35,000 to Mr. Rishab. But, before the same could be delivered to Mr. Rishab, Mr. Vibhav passed away. Mr. Somesh, son of Mr. Vibhav, who was the only legal representative of Mr. Vibhav approached Mr. Rishab and informed him about his father's death. Now, Mr. Somesh is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. Somesh can complete the instrument in the above scenario?

### **The General Clauses Act, 1897**

19. Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

### **Interpretation of Statutes**

20. Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

## SUGGESTED ANSWERS

1. (d)
2. (b)
3. (c)
4. (b)
5. (c)
6. (d)
7. (b)
8. (b)
9. (c)
10. (c)
11. Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

12. Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.

According to section 6 of the Companies Act, 2013,

'Save as otherwise expressly provided in this Act—

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

- (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

In simple words, the provisions of this Act shall have overriding effect. It is also to be noted that section 6, starts with "Save as otherwise ....". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the articles of association will prevail and cannot be considered as void.

**13. (a) According to Section 127 of the Companies Act, 2013**

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the *Nidhis*, subject to the following modification:

In case the dividend payable to a member is ₹ 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

- (i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (₹)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (₹)
800	25.08.2022	$800 \times 18\% \times 29/365$	11

## (ii) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was ₹ 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

- (b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

14. Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company. As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.
15. According to section 61(1)(d) of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in section 61(1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Shree Limited, in the Annual General Meeting requested the company to reduce the face value of each share (from ₹ 100 to ₹ 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Shree Limited, having authorized capital of 10,00,000 equity shares (face value ₹ 100 each) can reduce the face value of each share to ₹ 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to ₹ 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

16. As per second proviso to section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	55+15+10 [Land and Building, Plant & machinery and Factory Shed] = 80 crore
Total deposits accepted and interest payable thereon	80+ [(80*12%)*3 years] = 108.8 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

17. Section 134 of the Indian Contract Act 1872 provides that 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 of the creditor, the legal consequence of which is the discharge of the principal debtor. In other words, if principal debtor is discharged surety will also be discharged.

On the basis of provisions and facts of the case, it is clear that on assigning his property to creditors, Mr. Amit is released from his liability against his creditors including Mr. Sanjeev. Now, by following the provisions of section 134, as Mr. Amit (principal debtor) is released, Mr. Pramod (surety) will be discharged. Hence, Mr. Sanjeev cannot claim the payment from Mr. Pramod.

18. According to section 57 of the Negotiable Instruments Act, 1881, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered. An agent can complete the instrument if he is authorized by the principal to do so. But, a legal representative is not an agent of the deceased.

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.

Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

Hence, in the said case, Mr. Somesh, son of Mr. Vibhav (the deceased) cannot complete the instrument which was executed by Mr. Vibhav but could not be delivered to Mr. Rishab, because of his death.

19. By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

**20. Without prejudice**

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains....."

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.