

(GI-10, GI-11, VI-2(A) & AI-2(A), DI-1+2 & Drive)

DATE: 08.03.2024

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.

Answer 1:

- | | | | |
|-----|--------|---|------------|
| 1. | Ans. b | } | {2 M Each} |
| 2. | Ans. a | | |
| 3. | Ans. b | | |
| 4. | Ans. b | | |
| 5. | Ans. a | } | {1 M Each} |
| 6. | Ans. a | | |
| 7. | Ans. a | | |
| 8. | Ans. c | } | {2 M Each} |
| 9. | Ans. c | | |
| 10. | Ans. b | } | {1 M} |
| 11. | Ans. a | | |
| 12. | Ans. b | } | {2 M Each} |
| 13. | Ans. b | | |
| 14. | Ans. b | } | {1 M Each} |
| 15. | Ans. c | | |
| 16. | Ans. c | } | {2 M Each} |
| 17. | Ans. d | | |
| 18. | Ans. b | } | {1 M Each} |
| 19. | Ans. d | | |
| 20. | Ans. b | | |

Answer 2:

- (a) (i) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. } {2 M}
- Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. } {1 M}
- Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. } {1 M}

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Answer:

- (a) (ii)** According to Section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee. If the company does not file such report on Annual General Meeting within 30 days of the conclusion of the Annual General Meeting then the company and defaulting officers are liable for prescribed penalties. {1 M}
- Since, Pristine Ltd. is a listed company, hence it has to file a copy of annual Report with the Registrar within 30 days from 31st August, 2020. {1 M}

Answer:

- (b)** According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of - {1^{1/2} M}
- (i) its free reserves;
 - (ii) the securities premium account; or
 - (iii) the capital redemption reserve account.
- Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
- Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
- (i) it is authorised by its Articles;
 - (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
 - (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
 - (vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.
- Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend. {1/2 M
Each x 6
Point =
3 m}
- For the issue of bonus shares Shiva Cement Limited will require reserves of Rs. 50,00,000 (i.e. half of Rs. 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders. {1^{1/2} M}

Answer:

- (c)** According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains

unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of GEN X Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

{1 M}

(i) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

{1/2 M
Each}

(ii) The Board of Directors of GEN X Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.

{1 M}

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Answer:

(d) This given problem is based on sub-clause (87) of Clause 2 read with section 19 of the Companies Act, 2013.

As per sub-clause (87) of Clause 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

{1/2 M}

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas Section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

{1 M}

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

- (i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.
- (ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01 08.2020), according to the exception to section 19.
- (iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

{1 M}

{1/2 M
Each}

Answer 3:

(a) As per the provisions of sub-section (2) of section 42 of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.

It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

- (i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.

The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is

{2 M}

{1^{1/2} M}

- applicable to employees covered under the Company’s Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct. }
 (ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year. Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct. } {1 1/2 M}

Answer:

- (b) (i) **Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. } {2 M}
- (ii) **Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary. } {2 M}

Answer:

- (c) According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
 (a) an individual as auditor for more than one term of five consecutive years; and
 (b) an audit firm as auditor for more than two terms of five consecutive years.
 Provided that –
 (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
 (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term. } {2 M}
- Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.
 As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years. } {2 M}
- Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & Associates and joins Gupta & Gupta firm. }

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years.

Answer:

(d) 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 Rs.)
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.

Answer 4:

(a) (i) Every LLP shall be required to have atleast two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

Answer:

(a) (ii) The Act provides that any person (not being a partner in any LLP), who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP (known as 'partner by Holding out') is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

It has further been provided that where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

The provisions have also been made in the Act to provide that where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part

thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

Answers:

- (b)** According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-
- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.
- According to the Companies (Registration of Foreign Companies) Rules, 2014, "**electronic mode**" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.
- (i) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013. **{1/4 M}**
- (ii) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013. **{1/4 M}**

Answer:

- (c) As per Regulations related to Import of goods and services under FEMA:**
- (1) Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000 (Rupees Twenty Five Thousand only). **{2 M}**
- (2) A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations up to Rs. 100/- without any ceiling.
- Accordingly, following are the answers:
- (i) Import of Indian currency of Rs. 1,00,000 from Bhutan in the denomination of Rs. 50 is not prohibited and without any ceiling. Also, import of currency

- notes of Government of India and RBI notes of Rs. 20,000 from London, is permissible.
- (ii) In case where, Rs. 1,00,000 is brought from Bhutan in the denomination of Rs. 100 by AX, it is not prohibited and without any ceiling. } {2 M}

Answer:

- (d) According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:
- (1) every listed company;
 - (2) every unlisted public company having-
 - (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (B) turnover of 200 crore rupees or more during the preceding financial year;
 - (C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
 - (D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.
- Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate. Thus, New Limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid-up share capital or turnover is applicable for unlisted public company). Hence, the advice of the Company Secretary is not correct. } {1 M Each}
- } {1 M}

Answer 5:

- (a) (i) According to section 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. } {2^{1/2} M}
- In the given question, the court fixed the date of hearing of dispute between Kiran and Naman, on 29.04.2023, which was subsequently announced to be a holiday.
- Applying the above provisions we can conclude that the hearing date of 29.04.2023, shall be extended to the next working day.
- (ii) According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government. } {2^{1/2} M}
- Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.
- Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Answer:

- (b) LLP structure is proposed to allow entrepreneurs and businessmen/servicemen to combine themselves with a view to run a business/service for profit in a more flexible }

manner than companies. The internal processes of LLPs shall be governed by the LLP Agreement. To protect interests of various stakeholders, following approach has been followed in the LLP Act:- {1/2 M}

- Mandatory incorporation of LLPs with registrar with suitable due diligence to be followed by promoters/professionals at the time of incorporation. Provisions for mandatory Designated Partners Identification Number (DPIN) to be obtained by every designated partner (similar to DIP for directors of companies) have been proposed in the Act.
 - MCA-21 e-Governance process will be used for incorporation purposes which will help to track any unscrupulous promoter/partner of an LLP.
 - Details of partners and any changes made therein shall be required to be filed with the registrar;
 - Filing of annual documents like (SAS and Annual Return) with the Registrars will be mandatory. Such documents will also be open for public inspection;
 - Audit of all LLPs (except small LLPs which may be exempted by way of notification by Central Govt) shall be mandatory;
 - Provisions have been proposed in the Act to empower Registrar to conduct scrutiny of documents filed with him and for calling of any other relevant information from LLP or its partners/officials and also for summoning of LLPs' partners/officials in certain cases.
 - The Act also contains provisions for investigation of affairs of LLPs by competent inspectors to be appointed by Central Government, wherever circumstances so require.
- {1/2 M Each}

Answer:

(c) Export of goods / software may be made without furnishing the declaration in the following cases, namely: {1 M}

- (i) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export; {1 M}
- (ii) re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s. {1 M}

In the instant case, since Flying Club has fulfilled the requirement with respect to export and re- export of goods in compliance with FEM (Export of Goods and Services) Regulations, 2015, hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is not the contravention from Flying Club. {2 M}

Answer:

(d) Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:- {2 M}

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. }
 The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon. }
 Section 102 also prescribes ordinary businesses for which explanatory statement is not required. } **{2 M}**
 Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.
 Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.
 Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.
 The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Answer 6:

(a) Good Faith

In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. }
 But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. } **{1 M}**
 The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.
 It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897. } **{1 M}**
 The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable. } **{1 M}**

Answer:

(b) According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit: }
 Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for; } **{1 M}**
 It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from } **{1 M}**

the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, Hello Limited has received Rs. 50 Lakh as share application money on 01.06.2023. It failed to allot shares within the prescribed limit. Further, on 30.07.2023 the company adjusted the amount of Rs. 5 Lakh received from Diwas (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

- (1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2023 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Hello Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2023. {2 M}
- (2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakh adjusted against payment due to be received from Diwas, cannot be treated as refund. {1 M}

OR

Answer:

- (b) According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India. Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English. {1 M}
- It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed along with such accounts. {1 M}
- Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation. {1 M}
- Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English. {1 M}

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Answer:

- (c) (i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. {2 M}
- Hence, in the instant case, the Central Government can revoke the license given to P Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8. {2 M}
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
- However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)] Hence, the stated company may be wound up. {1 M}
- (iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)].
- In the instant case, P Cricket Club cannot be merged with Z Net Private Limited as the objects of both the companies are different and not similar.

Answer**(d) Rule of Literal Construction**

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction. {1 M}

This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation. {1 M}

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one. {1 M}

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or {1 M}

suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Nehul (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.

Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

{1 M}

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