

## PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any **four** questions from the remaining **five** questions.

### Question 1

- (a) (i) GP Ltd. had issued 8% redeemable preference shares of ₹ 100 each on 02/06/2018 redeemable after 5 years. During F.Y. 2020-21 GP Ltd. has decided to extend the period of redemption to 7 years. Three shareholders holding 12% of such redeemable preference shares objected to the proposal. Explain with reference to the Companies Act, 2013, whether the proposal is valid. **(4 Marks)**
- (ii) Mr. Y has been appointed as Accounts Manager of BM Private Limited which is a start-up company. The Board meeting for approval of accounts is to be held on 01.08.2021 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Y about the statements that are required to be prepared. **(2 Marks)**
- (b) Should a business entity be ethical? Briefly explain the benefits of business ethics. **(4 Marks)**
- (c) Powerful concepts in management such as participation, empowerment and involvement revolve around communication. State any four factors responsible for growing importance of communication. **(4 Marks)**

### Answer

- (a) (i) Section 55 of the Companies Act, 2013 provides that a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as are prescribed in Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.

As per the provisions of sub-section (1) of Section 48 of the Companies Act, 2013, where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

According to Section 48(2), where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

**Conclusion:**

In the instant case, proposal to extend the period of redemption from 5 years to 7 years will not be valid in case the shareholders holding 12% of such redeemable preference shares apply to the Tribunal, until it is confirmed by the Tribunal.

**Alternative Conclusion:**

Alternatively, if such shareholders do not apply to the Tribunal, their objection will not invalidate the proposal of extension of the period of redemption of shares in terms of provisions of sub-section (1) as stated above, since the proposed extended period of redemption is well within the period of 20 years (from the date of issue of shares) as stipulated under the provisions of Section 55 of the Companies Act, 2013.

- (ii) As per Section 2(40) of the Companies Act, 2013, **Financial Statement** in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Y has to prepare the above financial statements except Cash Flow Statement; since BM Private Limited is a start-up private company.

- (b) In the broad sense, ethics in business is simply the application of everyday moral or ethical norms to business. Being ethical in business requires acting with an awareness of how the products and services of an organization, and the actions of its employees, can affect its stakeholders and society as a whole and developing codes of conduct for doing business

in an ethical manner. While values and moral development are part of personal development, organizational factors can also affect ethical behaviour. The strength of an organization's culture influences ethical behaviour. So, it is the need of the hour that business entities should be ethical. It is now also a well accepted fact that ethical behaviour creates a positive reputation that expands the opportunities for profit.

**Benefits of business ethics:**

- (i) Improved society
  - (ii) Easier change management
  - (iii) Strong teamwork and greater productivity
  - (iv) Enhanced employee growth
  - (v) Ethics programs help guarantee that personnel policies are legal
  - (vi) Ethics programs help to avoid criminal acts "of omission" and can lower fines
  - (vii) Ethics programs help to manage values associated with quality management, strategic planning and diversity management.
  - (viii) Ethics helps to promote a strong public image
- (c) Powerful concepts in management such as participation, empowerment and involvement revolve around communication. Given below are some of the factors responsible for the growing importance of communication:
- (1) **Growth in the size and multiple locations of organisation:** Most of the organisations are growing larger and larger in size. The people working in these organisations may be spread over different states of a country or over different countries. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.
  - (2) **Growth of trade unions:** Over the last so many decades, trade unions have been growing strong. No management can be successful without taking the trade unions into confidence. Only through effective communication can a meaningful relationship be built between the management and the workers.
  - (3) **Growing importance of human relations:** Workers in an organisation are not like machines. They have their own hopes and aspirations. Management has to recognise them above all as sensitive human beings and work towards a spirit of integration with them which effective communication helps to achieve.
  - (4) **Public relations:** Every organisation has a social responsibility, towards customers, government, suppliers and the public at large. Communication with them is the only way an organisation can project a positive image of itself.

- (5) **Advances in Behavioural Sciences:** Modern management is deeply influenced by exciting discoveries made in behavioural sciences like psychology, sociology, transactional analysis etc. All of them throw light on subtle aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationships. And this is possible only through communication.
- (6) **Technological advancement:** The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only methods of work but also the composition of groups. In such a situation proper communication between superiors and subordinates becomes very necessary.

### Question 2

- (a) (i) *Mrs. V was an employee of a textile company which works from Monday to Saturday. She worked for 180 days during FY 2020-21 and was not in continuous service as she was on maternity leave with full pay for 45 days. Decide with reference to the provisions of the Payment of Gratuity Act, 1972, whether Mrs. V will be entitled to gratuity payable under the Act? Will your answer be different if the textile company works from Monday to Friday?* **(3 Marks)**

- (ii) *Run Cycles Ltd. has made super profits for FY 2020-21 after suffering losses for past three years. After mitigating the previous year losses the company has profits and proposes to:*

- (1) *pay bonus at the rate of 33% of the salary as Bonus out of the profits remaining after mitigating the losses.*
- (2) *give cycles as bonus in part payment of the above bonus.*
- (3) *enter into an agreement with the employees to forgo minimum bonus if there are no profits in a year.*

*Referring to the provisions of the Payment of Bonus Act, 1965 examine whether the proposal is valid.* **(3 Marks)**

- (b) *XYZ, a business organization has not adopted ethical behaviour at the workplace. What problems may arise at workplace in the given scenario?* **(4 Marks)**

- (c) *Formal communication flows through prescribed channels which all members of an organization follow.*

- (i) *What are the directions in which formal communication flows?*

- (ii) *What are the benefits of formal communication?* **(2 x 2 = 4 Marks)**

### Answer

- (a) (i) As per sub section (1) of section 2A of the Payment of Gratuity Act, 1972, an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service. This uninterrupted service will include the

period during which the employee could not work on account of sickness, accident, leave, lay-off, strike or a lockout or cessation of work not due to any fault of an employee.

Further sub section (2) of section 2A states that where any employee (not being an employee employed in a seasonal establishment) is not in continuous service [as defined in sub section (1)] for any period of one year, he shall be deemed to be in continuous service under the employer for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:

- (i) **one hundred and ninety days**, in the case of any employee employed below the ground in a mine or in an establishment **which works for less than six days in a week**, and
- (ii) **two hundred and forty days**, in any other case.

Explanation to section 2A (2) clarifies that for the purposes of calculating the number of days on which an employee has actually worked under an employer shall include the days on which in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.

Thus, as per the above provisions-

**If the textile company works from Monday to Saturday:** Mrs. V will be considered to be in continuous employment during the year for a period she worked + the period for which she was on maternity leave = 180 days + 45 days (which is well within the permissible period of twelve weeks) = 225 days. Since, she worked in an establishment (which works for six days in a week) for less than 240 days, she will not be entitled to gratuity.

**If the textile company works from Monday to Friday:** Mrs. V will be considered to be in continuous employment during the year for a period she worked + the period for which she was on maternity leave = 180 days + 45 days (which is well within the permissible period of twelve weeks) = 225 days. Since, she worked in an establishment which works for five days in a week for more than 190 days, she will be entitled to gratuity.

- (ii) (1) Section 11 of the Payment of Bonus Act, 1965, provides for the maximum bonus. As per the said provisions, where in respect of any accounting year referred to in section 10 of the Payment of Bonus Act, 1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting

year subject to a maximum of 20% of such salary or wage.

In the light of the stated provisions and under the given situation, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year.

Accordingly, proposal of payment of bonus at the rate of 33% of salary is not valid.

- (2) In terms of the provisions of section 19 of the Payment of Bonus Act, 1965, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer. Therefore, proposal to give cycles in part payment of bonus is not valid.
  - (3) As per the first proviso to section 31 of the Payment of Bonus Act, 1965, any agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right. Therefore, a proposal to enter into an agreement to forgo minimum bonus is null and void.
- (b) An organisation, whether a business or a government agency, is first and foremost a human society. Adoption of ethical behaviour at work place is important for all. A business organisation which does not adopt ethical behaviour at workplace may face the following consequences.
- i. Increased risk of employees making unethical decisions
  - ii. Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum
  - iii. Inability to recruit and retain top people
  - iv. Diminished reputation in the industry and the community
  - v. Significant legal exposure and loss of competitive advantage in the marketplace.
- XYZ, which does not adopt ethical behaviour at workplace may have to face the above consequences.
- (c) Formal communication flows along prescribed channels which all organizational members desirous of communicating with one another are obliged to follow.
- (i) **Directions in which formal communications flows:**
- (a) Downward
  - (b) Upward
  - (c) Horizontal or Lateral

(d) Diagonal or Crosswise

**(ii) Benefits of formal communication:**

- (a) The formal channels account for most of the effectiveness of communication. As has been said earlier great care has to be taken in sending across any letter or report through the 'proper' formal channel.
- (b) Formal channels cover an ever – widening distance as organizations grow. Through them it is easier to reach out to the branches of an organisation spread far and wide.
- (c) The formal channels, because of their tendency to filter information, keep the higher level managers from getting bogged down.
- (d) Formal channels of communication consolidate the organisation and satisfy the people in managerial position.

**Question 3**

- (a) (i) *Kaveri Irrigation an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act 1952, entrusted job work to contractor Mr. Raj. The contractor employed 50 persons to carry out in house job work at Kaveri Irrigation. The Provident fund authority after inspecting the establishment issued demand notice to Kaveri Irrigation to remit Employees' and Employers' contribution in respect of employees of the concern and the employee employed through contractor. Mr. Raj. and Kaveri Irrigation approached you to enlighten them about the provisions of the above Act in the given situation.* **(3 Marks)**
- (ii) *State the provisions relating to creation of Debenture Redemption Reserve in the following cases:*
- (1) *Debentures issued to public by All India Financial Institutions regulated by Reserve Bank of India.*
  - (2) *Debentures issued through public issue by Housing Finance Companies registered with the National Housing Bank.*
  - (3) *Debentures issued on private placement basis by an unlisted company.* **(3 Marks)**
- (b) *What is meant by 'environmental ethics'? How its non- adoption leads to 3 Ps viz. Polluter Pays Principles? Explain.* **(4 Marks)**
- (c) *People skills are essential ingredients for success in any career. Why is it important to have good interpersonal communications?* **(4 Marks)**

**Answer**

(a) (i) As per Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, "**Employee**" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with work of an establishment, and who gets his wages directly or indirectly from the employer and includes

- (i) Any person employed by or through a **contractor** in or in connection with the work of the establishment;
- (ii) Any person engaged as an apprentice, not being an apprentice engaged under the Apprentice Act, 1961, or under the standing orders of the establishment.

In the instant case, the employees (50 Nos.) of the contractor (Mr. Raj) are also considered as the employees of Kaveri Irrigation, an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Hence, Kaveri Irrigation has to remit employees' and employers' contribution in respect of employees of the concern as well as the employees employed through the contractor.

(ii) Rule 18(7) of the Companies (Share capital and Debentures) Rules, 2014, provides for the situations stated in the question.

1. Debenture Redemption Reserve is **not required for debentures issued by All India Financial Institutions regulated by Reserve Bank of India** and Banking Companies for both public as well as privately placed debentures.
2. For listed companies [other than All India financial Institutions and Banking Companies as specified in sub-clause (i) i.e. point 1 above], Debenture Redemption Reserve is not required in case of public issue of debentures for NBFCs registered with Reserve Bank of India under section 45-1A of the RBI Act, 1934 and for **Housing Finance Companies registered with National Housing Bank**.
3. For unlisted companies, [other than All India Financial Institutions and Banking Companies as specified in sub-clause (i) i.e. point 1 above] for companies other than NBFCs registered with RBI under section 45-1A of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, the adequacy of Debenture redemption Reserve shall be 10% of the value of outstanding debentures.

(b) **Environmental ethics:** Ecological ethics is based on the idea that the environment should be protected not only for the sake of human beings but also for its own sake. The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal.

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the product life



cycle and minimization of waste play major role in protection the environment and conservation of resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pays Principle". Removing subsidies that encourage environmental damage is another measure.

(c) "People skills" or interpersonal skills are an essential ingredient for success in any career.

Interpersonal communication is important because of the following functions it achieves:

- (i) **Gaining Information:** One reason of interpersonal communication is to gain knowledge about another individual. So attempt is to be made to gain information about others so that one can interact with them more effectively.
- (ii) **Building Understanding:** It helps to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. Content Messages refer to the surface level meaning of a message. Relationship Messages refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps to understand each other better.
- (iii) **Establishing Identity:** Engage in interpersonal communication helps to establish an identity based on relationships and the image present to others.
- (iv) **Interpersonal Needs:** Engage in interpersonal communication helps to express interpersonal needs. Three such needs identified is: inclusion, control, and affection.
  - Inclusion is the need to establish identity with others.
  - Control is the need to exercise leadership and prove one's abilities.
  - Affection is the need to develop relationships with people.

#### Question 4

- (a) (i) *Sunil drew a cheque in favour of David. After having issued the cheque, Sunil requested David not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to David. Decide, under the provisions of the Negotiable Instruments Act, 1881, whether the said acts of Sunil constitute an offence?* **(3 Marks)**

- (ii) *A, B and C entered into an agreement to carry on the business of trading in timber. The partnership deed contained a clause whereby the parties could refer any dispute for arbitration. C is of the view that this clause would make the agreement void as it was in restraint of legal proceedings. Explain with reference to the Indian Contract Act, 1872, whether contention of C is correct?* **(3 Marks)**
- (b) *There are several threats in work environment like Self-interest threats, Advocacy threats, Intimidation threats etc. What are the safeguards to be created in work environment to combat these threats?* **(4 Marks)**
- (c) *The Press Release should be written in a journalistic style. Comment on the statement highlighting guidelines for drafting a Press Release.* **(4 Marks)**

**Answer**

- (a) (i) Once a cheque is issued by the drawer, a presumption under section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under section 138. The object of sections 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Hence, the act of Sunil constitutes an offence.

- (ii) **Agreement in restraint of legal proceedings** (Section 28 of the Indian Contract Act, 1872): An agreement in restraint of legal proceedings resulting in restriction of one's right to enforce legal rights is void. Similarly, any agreement which abridges the usual period for commencing the legal proceedings is also void.

However, there are certain exceptions to the above rule:

A contract by which the parties agree to refer to arbitration, any dispute between them which may arise in future, or any dispute which has already arisen and is in writing, will be valid.

In view of the above provisions, the contention of C is not correct.

- (b) There are several threats in work environment like Self-interest threats, Advocacy threats, Intimidation threats etc. Safeguards to be created in the work environment to combat these threats are as follows:
- (i) The employing organization's systems of corporate oversight or other oversight structures.
  - (ii) The employing organisation's ethics and conduct programs.
  - (iii) Recruitment procedures in the employing organisation emphasizing the importance of employing high caliber competent staff.
  - (iv) Strong internal controls.
  - (v) Appropriate disciplinary processes.
  - (vi) Leadership that stresses the importance of ethical behavior and the expectation that employees will act in an ethical manner.
  - (vii) Policies and procedures to implement and monitor the quality of employee performance.
  - (viii) Timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.
  - (ix) Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organization any ethical issues that concern them without fear of retribution.
- (c) **Guidelines for drafting of Press Release:**
- (i) The press release should be written in a journalistic style. It should provide facts or information of interest to the readers and should attempt to cover all aspects of a specific subject. There should not be any loose ends.
  - (ii) It should be on a subject which is recent or in news.
  - (iii) The release should not be generally lengthy. It should be concise and to the point.
  - (iv) The release is a piece of clear writing without any ambiguity, without any effort towards colour or ornamentation.
  - (v) The introduction or lead should be in a summary format as it is a news story. The relative value of the various ingredients of the subjects in the press release is weighted and evaluated and the most pertinent of them are included in the lead.
  - (vi) The releases should have a consistent format. Generally, the name of the organization from where the release emanates is given on the top. The date and place are indicated on the top right side. The release should have a title and a sub-title also, if necessary. It should have a suitable introductory paragraph.

In the case of releases from non-official organization, it is desirable also to mention the designation of the person issuing the release and his contact number.

### Question 5

- (a) (i) Bank B had advanced a loan of ₹ 50 Lakhs to ABC Private Limited on 01/04/2021. Due to the lockdown and other circumstances, the charge was not registered with the Registrar of Companies (RoC). Subsequently, ABC went into liquidation and Mr. X, Liquidator contends that since Bank B has not ensured the registration of charge with RoC, the bank cannot claim the repayment of the loan. Examine with reference to the Companies Act, 2013, whether the contention of Liquidator is correct? **(3 Marks)**
- (ii) Tamarind Ltd., a leading oil manufacturer in Eastern India, wants to enter into an agreement with another emerging manufacturer, Oilseeds Ltd. in that area for not selling the products below the price of its own products. Comment on the legality of such agreement considering the parameters of Competition Law. **(3 Marks)**
- (b) Eighth Annual General Meeting of the shareholders of Aashiana Limited was held on 28<sup>th</sup> August, 2021 at its registered office in Pune. 45 shareholders attended the meeting in person and 5 shareholders in proxy. Several businesses were transacted at the meeting including the adoption of annual accounts for the year ended 31<sup>st</sup> March, 2021. Draft the minutes of the Annual General Meeting indicating how shall the adoption of accounts, being one of the business' transacted at the meeting, be recorded. **(4 Marks)**
- (c) Write a note on 'influencing and persuasion skills' in the process of negotiation. **(4 Marks)**

### Answer

- (a) (i) Consequence of Non-Registration of Charge [Section 77 (3) & (4) of the Companies Act, 2013]

No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar.

This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

But this shall not prejudice any contract or obligation for the repayment of the money secured by a charge. This means that the debt is valid and may be enforced against the company through the courts by filing a suit, but the security is lost.

Further, it may be noted that failure to register charge shall not absolve a company from its liability in respect of any offence under this Chapter.

In the instant case, contention of Liquidator is not correct. ABC Private Limited has to repay the loan given by Bank B.

- (ii) The Competition Act, 2002, intended to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto.

**Parameters of Competition Law**

- (i) **Prohibition of certain agreements**, which are considered to be anti-competitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or likely to cause an appreciable adverse effect on competition within India.
- (ii) **Abuse of dominant position** by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market excess or through in any other mode are prohibited.
- (iii) **Regulation of combinations** which cause or likely to cause an appreciable adverse effect on competition within the relevant market in India is also considered to be void.

In the instant case, Tamarind Ltd. is intending to enter into an agreement which is anti-competitive in nature. Hence, the agreement by Tamarind Ltd. with Oilseeds Ltd. will be illegal under the ambit of the Competition Law in India.

**(b) Minutes of the 8th Annual General Meeting**

Eighth Annual General Meeting of Aashiana Limited held at

Place: \_\_\_\_\_

Date: 28<sup>th</sup> August, 2021

Time: At \_\_\_\_\_ A. M.

**Present**

1. Shri \_\_\_\_ Chairman
2. Shri \_\_\_\_ Director.
3. Shri \_\_\_\_ Director.
4. Shri \_\_\_\_ Director.
5. Shri \_\_\_\_ Director.
6. Shri \_\_\_\_ Director.

7. Shri \_\_\_\_\_, representative of \_\_\_\_\_ and Co. Chartered Accountants.

8. Shri \_\_\_\_\_, Secretary of the company.

45 shareholders attended the meeting in person and 5 shareholders through proxy.

**1. Notice:**

**2. Directors' Report and Accounts:** With the consent of the members present, the Director's Report and Accounts having already been circulated to the members were taken as read.

**3. Auditors' Report:**

**4. Adoption of Accounts:**

The Chairman then invited queries from the members present on Directors' Report, Accounts and Auditor Report, but there was no query. Thereafter, the Chairmen proposed the following resolution which was recorded by .....

"Resolved that the audited Balance Sheet as on 31st March, 2021, Profit and Loss Account for the year ended 31st March, 2021, Cash Flow Statement, Directors' Report and Auditors Report thereon be the same are hereby received, considered and adopted."

Carried unanimously \_\_\_\_\_

**5. Dividend:**

**6. Directors:**

**7. Auditors:**

The meeting conducted ended with a vote of thanks to the Chair.

Dated: \_\_\_\_\_ 2021

Sd/-

Chairman

**(c) 'Influencing and Persuasion Skills' in the process of negotiation:**

Many situations arise where person need to influence the behaviour or attitudes of managers, superiors, colleagues, customers, clients, suppliers and subordinates. Often, people either do not have or do not wish to use position power. We have to rely on influencing others through assertiveness, negotiation and empowering skills.

Influence is a respectable way to change other people's actions ("these are the benefits of doing this.") the other ways are-Command or Manipulations.

**Influence** is much wider in depth and dimension. It is:

- A process not an action

- A set of skills-including body language, listening, building rapport, planning, probing and explaining
- A set of attitudes - including confidence, trust, patience and belief in win-win outcomes
- It is getting people to do things because they want to.
- It requires one to be other focused rather than self-focused
- It enables proactive leadership

**Persuasion** is one dimension of influence. It is a direct communication when benefits are stated in a reasoned arguments and competent views dealt with in a respectful manner. The two principles of persuasion are:

- **Honour and Respect:** These are communicated in various ways-You can respect people's time by being sensitive about the timing of your communication.
- **Understanding the other person's Frame of Reference:** Each of us have a unique personality but one can get to know a great deal about the other person by approaching things from their point of reference, asking questions and listening.

#### Question 6

- (a) (i) *Mr. A contracts with B without disclosing that he was the agent of C for the same business. Subsequently on becoming aware that A is the agent of C, B refuses to perform his part on the ground that had he known that A was agent of C he would not have entered into the contract.*

*Explain with reference to the Indian Contract Act, 1872 whether B's contention is correct.*

**(3 Marks)**

- (ii) *Mr. Kamal holds 400 shares of Yamuna Ltd. He intends to nominate these shares to his son Aman. Discuss the provisions of the Companies Act, 2013 in relation to facility of nomination.*

**(3 Marks)**

**OR**

*Mr. X had incorporated a one-person company on 26.07.2021, Mr. Y was named as a nominee in the memorandum. Now, Mr. X, considering the perpetuity nature of company, would like to appoint XYZ Private Limited as a nominee instead of Mr. Y. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. X to appoint XYZ Private Limited as a nominee is valid and whether such change will attract the provisions related to alteration of the Memorandum of Association?*

- (b) *Mention the guiding principles for managing ethics in workplace.*

**(4 Marks)**

- (c) Draft a 'Power of Attorney' by RST Limited authorizing Mr. X, a Chartered Accountant to appear before the Income Tax Authorities in respect of pending taxation matter.

(4 Marks)

**Answer**

- (a) (i) An '**undisclosed principal**' comes into play where an agent having the authority to contract, does not disclose the fact, concealing not only the name of the principal but also the fact that there is a principal; here the agent gives an impression that he acts on his own.

In case of 'undisclosed principal', the mutual rights, of principal, agent and third party as per the provisions of Section 230 and 231 of the Indian Contract Act, 1872, are as follows:

- (a) the liability of the agent is his own since he has not disclosed that there is a principal
- (b) where the third party comes to know about the existence of the principal he can sue the agent or the principal.
- (c) the third party's interest would stand protected evenly, and would not suffer even if the principal surfaces and intervenes at a later date.
- (d) third party has a right to refuse, if the principal discloses himself, on the ground that had he known about the principal he would not have entered into the contract.

In the instant case, B's contention is correct and he can refuse to perform his part on the ground that had he known that A was the agent of C, he would not have entered into the contract.

(ii) **Power to nominate** (Section 72 of the Companies Act, 2013)

- (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.
- (2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may



be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

- (4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

**OR**

- (ii) As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-
- (a) shall be eligible to incorporate a One Person Company (OPC);
  - (b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, XYZ Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. X to appoint XYZ Private Ltd. as a nominee is not valid.

Any change in nominee of OPC shall not be deemed to be an alteration of the memorandum of association of the OPC.

**(b) Managing ethics in workplace:**

The focus on core values and sound ethics, the hall mark of ethical management, is being recognized as an important way to ensure the long term effectiveness of governance structures and procedures and to avoid the need for whistle blowing.

Employers, who understand the importance of work place ethics, provide their work force with an effective framework and guiding principles of identity and address ethical issues as they arise. These guidelines for managing ethics and to avoid the need for whistle-blowing in the work place may be summarized as follows:-

- (a) Have a Code of Conduct and ethics
- (b) Establishment open communication
- (c) Make ethical decisions in group and make decision public whenever appropriate
- (d) Integrate ethics with other management practices
- (e) Use of cross functional teams when developing and implementing the ethics management programme
- (f) Appointing an ombudsman

- (g) Creating an atmosphere of trust
- (h) Regularly updating of policies and procedures
- (i) Include a grievance policy for employees
- (j) Set an example from the top

**(c) Power of Attorney to appear before the Income Tax Authorities**

BY THIS POWER OF ATTORNEY, RST Limited (full details), the company hereby appoints Mr. X, Chartered Accountant, .....S/o....., R/o.....as attorney of the company above named and authorize him for the purpose hereinafter mentioned:

1. That the said attorney shall appoint an advocate of his choice and hand him over the judgment of the tribunal of Income Tax and instruct him to file the appeal against the order, for the Assessment Year.
2. That the said attorney shall execute and sign all the related papers under the supervision of the Board.
3. That specimen signature of the said attorney is given below of this deed.
4. The said attorney shall generally do all other lawful acts necessary for the conduct of the said case.

AND, RST Limited DO HEREBY AGREE to ratify all acts, things, deeds or proceedings lawfully done by Mr. X on behalf of the Company and in the name of the Company by virtue of this power of attorney and the same shall be binding on firm in full force or effect.

IN WITNESS WHEREOF RST Limited have executed this power at .....this.....day of.....20.....

Signature

(Power of Attorney Holder)

Signature

(Executant)

Witness: 1 \_\_\_\_\_

2 \_\_\_\_\_